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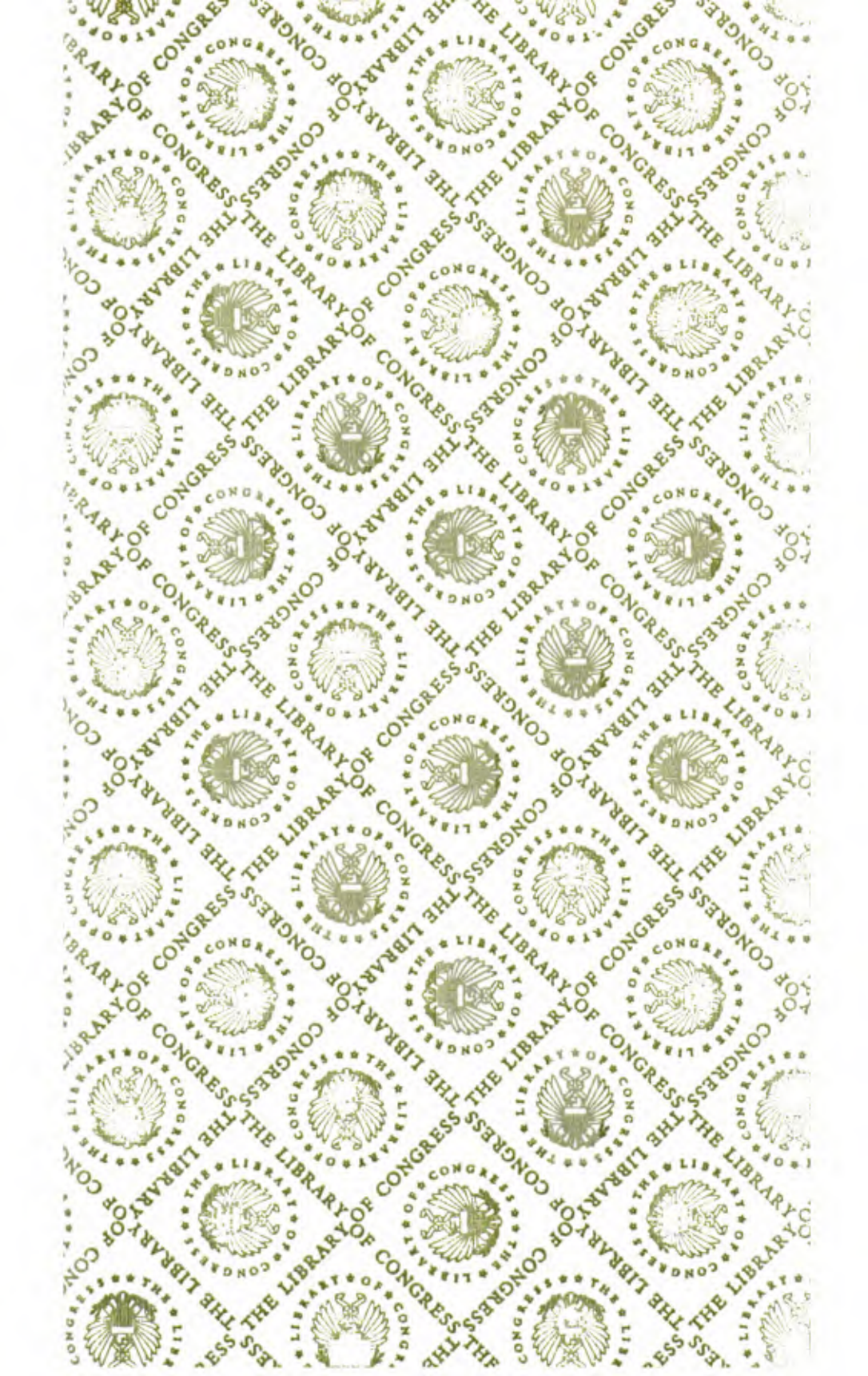
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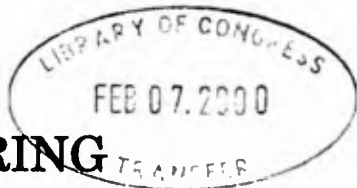
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CHILD PROTECTION AND SEXUAL PREDATOR PUNISHMENT ACT OF 1998 AND RELATED PROPOSALS



HEARING
BEFORE THE
SUBCOMMITTEE ON CRIME
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTH CONGRESS
SECOND SESSION
ON
H.R. 3494 and Related Legislation

APRIL 30, 1998

Serial No. 122



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CONTENTS

HEARING DATE

April 30, 1998	Page 1
----------------------	-----------

TEXT OF BILLS

H.R. 1972	3
H.R. 2173	5
H.R. 2122	6
H.R. 2488	6
H.R. 2815	7
H.R. 3185	8
H.R. 3729	8
H.Con.Res. 125	10
H.R. 3494	14
H.R. 305	21

OPENING STATEMENT

McCollum, Hon. Bill, a Representative in Congress from the State of Florida, and chairman, Subcommittee on Crime	1
---	---

WITNESSES

DiGregory, Kevin, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice	76
Foley, Hon. Mark, a Representative in Congress from the State of Florida	45
Franks, Hon. Bob, a Representative in Congress from the State of New Jersey	63
Gutknecht, Hon. Gil, a Representative in Congress from the State of Min- nesota	66
Lampson, Hon. Nick, a Representative in Congress from the State of Texas	35
Niemann-Boehle, Deborah, Chicago, IL	22
Pryce, Hon. Deborah, a Representative in Congress from the State of Ohio	30
Riley, Hon. Bob, a Representative in Congress from the State of Alabama	41
Slaughter, Hon. Louise, a Representative in Congress from the State of New York	32
Weller, Hon. Jerry, a Representative in Congress from the State of Illinois	25

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

DiGregory, Kevin, Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice: Prepared statement	77
Foley, Hon. Mark, a Representative in Congress from the State of Florida: Prepared statement	48
Franks, Hon. Bob, a Representative in Congress from the State of New Jersey: Prepared statement	64
Gutknecht, Hon. Gil, a Representative in Congress from the State of Min- nesota: Prepared statement	68
Jackson Lee, Hon. Sheila, a Representative in Congress from the State of Texas: Prepared statement	71
Amendment to H.R. 3494 offered by Ms. Jackson Lee of Texas	75
Lampson, Hon. Nick, a Representative in Congress from the State of Texas: Prepared statement	36
Niemann-Boehle, Deborah, Chicago, IL: Prepared statement	24

IV

	Page
Pryce, Hon. Deborah, a Representative in Congress from the State of Ohio: Prepared statement	31
Riley, Hon. Bob, a Representative in Congress from the State of Alabama: Prepared statement	43
Slaughter, Hon. Louise, a Representative in Congress from the State of New York: Prepared statement	34
Weller, Hon. Jerry, a Representative in Congress from the State of Illinois: Prepared statement	26

CHILD PROTECTION AND SEXUAL PREDATOR PUNISHMENT ACT OF 1998 AND RELATED PROPOSALS

THURSDAY, APRIL 30, 1998

**HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME
COMMITTEE ON THE JUDICIARY,
*Washington, DC.***

The subcommittee met, pursuant to notice, at 9:35 a.m., in Room 2237, Rayburn House Office Building, Hon. Bill McCollum [chairman of the subcommittee] presiding.

Present: Representatives Bill McCollum, George W. Gekas, Steve Buyer, Steve Chabot, and Sheila Jackson Lee.

Staff present: Paul J. McNulty, Chief Counsel; Glenn R. Schmitt, Counsel; Aerin D. Bryant, Professional Staff and David Yassky, Minority Counsel.

OPENING STATEMENT OF CHAIRMAN McCOLLUM

Mr. McCOLLUM [presiding]. The Subcommittee on Crime will come to order. This morning we'll consider issues related to the bill H.R. 3494, the "Child Protection and Sexual Predator Punishment Act of 1998."

As you may recall, last November, the subcommittee held a hearing to examine the nature and threat of pedophiles on the Internet. We learned from our witnesses that with the advent of ever growing computer technology, criminals can roam the Internet just as they roam the streets. Cyberpredators often cruise the information superhighway in a menacing search for lonely, rebellious, or trusting young people. The anonymous nature of the online relationship allows user to misrepresent their age, gender, or interests. Total strangers bent on sexual assault can reach into the home and befriend a child.

Recent highly publicized news accounts of pedophiles using the Internet to seduce or persuade children to meet them to engage in sexual activities have sparked vigorous debate about the wonders and perils of the information superhighway. Youths who have agreed to such meetings have been photographed for child pornography, raped, beaten, robbed, and worse.

Just this past weekend, a 38-year-old Sterling, Virginia man pleaded guilty in U.S. district court to several counts of child pornography possession and traveling across State lines to engage in sexual activity with girls as young as 13 years old. A search of his home computer turned up a buddy list of several youths whom he'd

met on the Internet. The newspapers indicate that this man, if convicted, could receive a sentence of only 3 years.

The bill we will discuss today is the result of several months of effort by the Crime Subcommittee to respond to the horrifying menace of sex crimes against children. H.R. 3494, the "Child Protection and Sexual Predator Punishment Act" is the most comprehensive package of new crimes and increased penalties we've ever developed in response to this problem. Those who commit these heinous crimes must be sent a message that they will be punished swiftly and severely.

H.R. 3494 targets pedophiles who stalk children on the Internet. It prohibits contacting a minor over the Internet for the purposes of engaging in illegal sexual activity and punishes those who knowingly send obscenity to children. In addition to Internet-related crimes, this bill also includes other very important provisions such as cracking down on serial rapists and authorizing pre-trial detention for Federal sex offenders.

Nearly two-thirds of prisoners serving time for rape and sexual assault victimized children. Almost one-third of these victims were less than 11 years old. We must provide law enforcement with the tools it needs to investigate and bring to justice those individuals who prey on our Nation's children.

Today, we'll also consider several related measures pending before the subcommittee concerning sex crimes against children. These bills may be considered at a later date as amendments to H.R. 3494, and today's hearing will provide the sponsors of these bills the opportunity to speak in support of their proposals.

The last witness for today's hearing will represent the Department of Justice and will provide the Administration's views on H.R. 3494 and several related bills.

I look forward, as I know my colleagues do, to hearing all of this testimony, and I would like at this point in time to recognize any of my colleagues if they want to make an opening statement. Mr. Buyer? If not, Mr. Gekas?

Mr. GEKAS. Mr. Chairman, just a point of inquiry. There's a scheduled memorial service for our colleague—our late colleague, Mr. Schiff, scheduled for 10 o'clock in the Rotunda. Does the chairman intend to recess for that or to continue and allow those who want to go to simply go to those services?

Mr. MCCOLLUM. I think the latter because of our schedule today and in deference to the witnesses we have. I would like to be able to recess, but I think, unfortunately, we're not going to be able to if we want to meet our schedule. I recognize that difficulty, especially for our Member witnesses, which is one of the reasons why, perhaps, we should proceed as quickly as we can through this process—

Mr. GEKAS. I thank the Chair.

Mr. MCCOLLUM.[continuing.] For those who want to go. Now, if the Members themselves, who are witnesses this morning, wish to attend that service and want to still testify, we can make accommodations for that. I will not keep you from being able to do that. I would not wish to do that.

Our first witness this morning is Mrs. Deborah Niemann-Boehle who was born and raised in south Texas. She attended college at

Eastern Connecticut State University and graduate school at Brown University in Providence, Rhode Island. She then married Michael Boehle who was a Naval Submarine Officer at the time. During her 6 years as a Navy wife, Mrs. Boehle was a freelance writer for Parenting Magazine. She is now a city editor of a newspaper in Illinois where she and her husband have settled down to raise their children ages 5, 7, and 10. Mrs. Boehle is a constituent of Congressman Jerry Weller and she is here today to speak in support of Mr. Weller's bill H.R. 2815, the "Protecting Children from Internet Predators Act." Joining Mrs. Boehle will be Congressman Weller.

Mr. Weller represents the 11th district of Illinois. He's on the Ways and Means Committee and the Subcommittees on Oversight and Social Security. Mr. Weller, Ms. Boehle, you are welcome. Mr. Weller, do you wish to further introduce your constituent or should she proceed?

Mr. WELLER. Well, let me begin, Mr. Chairman, by thanking you for convening these hearings and commending you for your leadership for taking this issue on. I think it's probably best while I do have some brief testimony, I thought it would be most appropriate if Mrs. Boehle begins because I think the case that she will outline best illustrates why it's so important that H.R. 2815 be incorporated with your legislation. So, Mrs. Boehle, if you would like to submit your testimony.

105TH CONGRESS
1ST SESSION

H. R. 1972

To amend title 18, United States Code, to prohibit the sale of personal information about children without their parents' consent, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 19, 1997

Mr. FRANKS of New Jersey (for himself, Mr. McHUGH, Mrs. KELLY, Ms. MOLINARI, Mr. EVANS, Mr. FOLEY, Mr. DEAL of Georgia, Mr. COSTELLO, Ms. JACKSON-LEE of Texas, Mr. FATTAH, Mr. BRYANT, Mr. PETERSON of Minnesota, Mr. HORN, Ms. GRANGER, Mr. KIM, Mr. KING, Ms. LOFGREN, Mr. CUMMINGS, Mr. OBERSTAR, Ms. FURSE, Mr. DeFAZIO, Mr. BARRETT of Wisconsin, Mr. BAKER, Mr. NORWOOD, Mr. FOX of Pennsylvania, Mr. VENTO, Mr. ROTHMAN, Mr. FAZIO of California, Mr. DUNCAN, Mr. NEY, Mr. ROMERO-BARCELÓ, Mr. PARKER, Ms. RIVERS, Ms. NORTON, Mr. CLEMENT, Mr. ENGLISH of Pennsylvania, and Mr. WEXLER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to prohibit the sale of personal information about children without their parents' consent, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Children's Privacy Protection and Parental Empowerment Act of 1997".

SEC. 2. PROHIBITION OF CERTAIN ACTIVITIES RELATING TO PERSONAL INFORMATION ABOUT CHILDREN.

(a) IN GENERAL.—Chapter 89 of title 18, United States Code, is amended by adding at the end the following:

“§ 1822. Sale of personal information about children

“(a) Whoever, in or affecting interstate or foreign commerce, being a list broker, knowingly—

“(1) sells, purchases, or receives remuneration for providing personal information about a child, knowing that such information pertains to a child, without the written consent of a parent of that child;

“(2) conditions any sale or service to a child or to that child's parent on the granting of such a consent; or

“(3) fails to comply with the request of a parent—

“(A) to disclose the source of personal information offered for sale or remuneration by the list broker about that parent's child;

“(B) to disclose all information that has been sold or otherwise disclosed by that list broker about that child;

“(C) to disclose the identity of all persons to whom the list broker has sold or otherwise disclosed personal information about that child; or

“(D) to discontinue providing personal information to third parties about that parent's child;

shall be fined under this title or imprisoned for not more than 1 year, or both.

“(b) Whoever, in or affecting interstate or foreign commerce, being a person who uses, in the course of commerce, any personal information about a child under age 16, that was obtained for commercial purposes, to contact that child or a parent of that child to offer a commercial product or service to that child, knowingly fails to comply with the request of a parent—

“(1) to disclose the source of personal information about that parent's child;

“(2) to disclose all information that has been sold or otherwise disclosed by that list broker about that child;

“(3) to disclose the identity of all persons to whom personal information about that child has been disclosed; or

“(4) to discontinue providing personal information to third parties about that parent's child;

shall be fined not more than \$5,000.

“(c) Whoever, in or affecting interstate or foreign commerce, knowingly—

“(1) uses prison inmate labor, or any worker who is registered pursuant to title XVII of the Violent Crime Control and Law Enforcement Act of 1994, for data processing of personal information about children; or

“(2) distributes or solicits any personal information about a child, with the intent of abusing or causing physical harm to the child or to sexually exploit the child, or having reason to believe that the child will be so abused, harmed, or exploited as a result of that distribution or solicitation;

shall be fined under this title or imprisoned not more than 5 years, or both.

“(d) Whoever, in or affecting interstate or foreign commerce, knowingly releases personal information about another person's child to any entity that intends to use the information to solicit the sale of a product or service, without the permission of that child's parent, shall be fined not more than \$5,000.

“(e) A child or a parent of a child with respect to whom a violation of this section occurs may in a civil action obtain appropriate relief, including statutory money damages of not less than \$5,000. The court shall award a prevailing plaintiff in a civil action under this subsection a reasonable attorney's fee as a part of the costs.

“(f) Nothing in this section affects the sale of lists to—

“(1) the National Center for Missing and Exploited Children;

“(2) accredited colleges, universities, and other institutions of higher learning;

“(3) the United States military; or

“(4) local, State, or Federal law enforcement agencies.

“(g) It shall be the duty of each list broker operating in or affecting interstate or foreign commerce to make that broker's databases available twice annually, without charge, to the National Center for Missing and Exploited Children, established under section 404(b) of the Missing Children's Assistance Act, in order to allow the Center to match it with the database of missing children held by the Center.

“(h) As used in this section—

“(1) the term ‘child’ means a person who has not attained the age of 16 years;

“(2) the term ‘parent’ includes a legal guardian;

"(3) the term 'personal information' means information (including name, address, telephone number, social security number, electronic mail address, and physical description) about an individual identified as a child, that would suffice to locate and contact that individual; and

"(4) the term 'list broker' means a person who provides for remuneration mailing lists, computerized or telephone reference services, databases, or the like, containing personal information about children."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 89 of title 18, United States Code, is amended by adding at the end the following new item:

"1822. Sale of personal information about children."

○

105TH CONGRESS
1ST SESSION

H. R. 2173

To amend the Crime Control Act of 1990 to require reporting of child abuse by electronic communication service providers.

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 1997

Mr. FRANKS of New Jersey introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Crime Control Act of 1990 to require reporting of child abuse by electronic communication service providers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Abuse Notification Act of 1997".

SEC. 2. REPORTING OF CHILD SEXUAL ABUSE BY ELECTRONIC COMMUNICATION SERVICE PROVIDERS.

(a) IN GENERAL.—Section 226(a) of the Crime Control Act of 1990 (42 U.S.C. 13031(a)) is amended—

(1) by inserting "(1)" before "A person"; and

(2) by adding at the end the following:

"(2) A person who, while engaged in providing an electronic communication service or a remote computing service to the public, learns of such facts through an interstate or foreign transaction or through a facility or means of interstate or foreign commerce, if the incident is an incident of sexual abuse, shall as soon as reasonably possible make such a report."

(b) Section 2702(b)(6) of title 18, United States Code, is amended to read as follows:

"(6) to a law enforcement agency—

"(A) if such contents—

"(i) were inadvertently obtained by the service provider; and

"(ii) appear to pertain to the commission of a crime; or

"(B) if required by section 226(a)(2) of the Crime Control Act of 1990."

○

105TH CONGRESS
1ST SESSION

H. R. 2122

To amend title 18, United States Code, to increase penalties for certain offenses where the victim is a child.

IN THE HOUSE OF REPRESENTATIVES

JULY 9, 1997

Mr. FRANKS of New Jersey (for himself, Mrs. ROUKEMA, Ms. DUNN, Mr. FROST, Mr. OXLEY, Mr. BRADY, Mr. PALLONE, Mr. SAXTON, Mr. LOBIONDO, Mr. FRELING-HUYSEN, Mr. PAPPAS, and Mr. SMITH of New Jersey) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to increase penalties for certain offenses where the victim is a child.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Joan's Law Act of 1997".

SEC. 2. DEATH OR LIFE IN PRISON FOR CERTAIN OFFENSES WHOSE VICTIMS ARE CHILDREN.

Section 3559 of title 18, United States Code, is amended by adding at the end the following:

"(d) DEATH OR IMPRISONMENT FOR CRIMES AGAINST CHILDREN.—Notwithstanding any other provision of law, a person who is convicted of a Federal offense that is a serious violent felony (as defined in subsection (c)) or a violation of section 2251 shall, unless the sentence of death is imposed, be sentenced to imprisonment for life, if the victim of the offense is under 14 years of age and the victim dies as a result of the offense."



105TH CONGRESS
1ST SESSION

H. R. 2488

To amend the National Child Protection Act of 1993 to facilitate the fingerprint checks authorized by that Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 17, 1997

Mr. FOLEY (for himself, Mr. LAMPSON, Mr. CRAMER, Mr. CASTLE, Mrs. THURMAN, Mr. FRANKS of New Jersey, Mrs. FOWLER, Mr. BENTSEN, Mr. LUTHER, Mr. BRADY, Ms. DUNN, Mr. REYES, Mr. WEXLER, Mrs. MORELLA, and Mr. BARCIA) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the National Child Protection Act of 1993 to facilitate the fingerprint checks authorized by that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Volunteers for Children Act".

SEC. 2. FACILITATION OF FINGERPRINT CHECKS.

(a) **STATE AGENCY.**—Section 3(a) of the National Child Protection Act of 1993 (42 U.S.C. 5119a(a)) is amended by adding at the end the following:

"(3) In the absence of State procedures referred to in paragraph (1), youth-serving nonprofit organizations and institutions may contact an authorized agency of the State to request a nationwide background check, including a check of fingerprint records."

(b) **FEDERAL LAW.**—Section 3(b) of such Act (42 U.S.C. 5119a(b)) is amended by adding after and below paragraph (5) the following:

"The requirement of the public law referred to in paragraph (5) does not apply to requests by youth-serving nonprofit organizations for nationwide background checks, including checks of fingerprint records."

(c) **FEES.**—Section 3(e) of such Act (42 U.S.C. 5119a(e)) is amended by striking "In the case of" and all that follows through "the State shall" and inserting "In the case of a background check requested by a qualified entity, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed the actual costs of the background check conducted with fingerprints. The State may".

(d) **AUTHORIZATION.**—Section 4(b)(2) of such Act (42 U.S.C. 5119b(b)(2)) is amended by striking "1994, 1995, 1996, and 1997" and inserting "1998, 1999, 2000, and 2001".



105TH CONGRESS
1ST SESSION

H. R. 2815

To amend title 18, United States Code, to provide penalties for the use of interstate facilities to target children for sexually explicit messages or contacts.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 5, 1997

Mr. WELLER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to provide penalties for the use of interstate facilities to target children for sexually explicit messages or contacts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protecting Children From Internet Predators Act of 1997".

SEC. 2. USE OF INTERSTATE FACILITIES TO TARGET CHILDREN FOR SEXUALLY EXPLICIT MESSAGES OR CONTACTS.

(a) **GENERALLY.**—Chapter 110 of title 18, United States Code, is amended by adding at the end the following:

"§ 2260A. Use of Interstate facilities to target children for sexually explicit messages or contacts

"Whoever uses any facility in or affecting interstate commerce (including any computer network or service) to target an individual under the age of 16 years for sexually explicit messages or contacts shall be fined under this title or imprisoned not more than 5 years, or both."

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 110 of title 18, United States Code, is amended by adding at the end the following new item:

“2260A. Use of Interstate facilities to target children for sexually explicit messages or contacts.”.



105TH CONGRESS
2D SESSION

H. R. 3185

To amend title 18, United States Code, to make illegal all private possession of child pornography.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 1998

Mr. RILEY (for himself, Mr. BACHUS, Mr. DELAY, Mr. PICKERING, Mr. REDMOND, Mr. ADERHOLT, Mr. CALVERT, Mr. KING, Mr. SMITH of New Jersey, Mr. FRANKS of New Jersey, Mr. WATTS of Oklahoma, Ms. RIVERS, Mr. LARGENT, Mr. COOKSEY, Mr. GRAHAM, Mr. OXLEY, Mrs. ROUKEMA, Mr. SANDLIN, Mr. FOLEY, Mrs. KELLY, Mr. BURR of North Carolina, and Mr. SOLOMON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, to make illegal all private possession of child pornography.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Abolishing Child Pornography Act”.

SEC. 2. POSSESSION OF VISUAL DEPICTIONS OF MINORS ENGAGING IN SEXUALLY EXPLICIT CONDUCT.

(a) **EXPLOITATION.**—Section 2252(a)(4) of title 18, United States Code, is amended in each of subparagraphs (A) and (B)—

(1) by striking “3 or more books, magazines, periodicals, films, video tapes” and inserting “a book, magazine, periodical, film, video tape”; and

(2) by striking “contain” and inserting “contains”.

(b) **OTHER ACTIVITIES.**—Section 2252A(a)(5) of title 18, United States Code, is amended, in each of subparagraphs (A) and (B), by striking “3 or more images of” and inserting “an image”.



1105TH CONGRESS
2D SESSION

H. R. 3729

To ensure that prisoners are not permitted unsupervised access to any interactive computer service.

IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 1998

Ms. PRYCE of Ohio introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To ensure that prisoners are not permitted unsupervised access to any interactive computer service.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Stop Trafficking of Pornography in Prisons Act of 1998".

SEC. 2. PRISONER ACCESS.

Notwithstanding any other provision of law, no agency, officer, or employee of the United States shall implement, or provide any financial assistance to, any Federal program or Federal activity in which a Federal prisoner is allowed access to any interactive computer service without the supervision of an official of the Government.

SEC. 3. RECOMMENDED PROHIBITION.

(a) **FINDINGS.**—Congress finds that—

(1) a Minnesota State prisoner, serving 23 years for molesting teenage girls, worked for a nonprofit work and education program inside the prison, through which the prisoner had unsupervised access to the Internet;

(2) the prisoner, through his unsupervised access to the Internet, trafficked in child pornography over the Internet;

(3) Federal law enforcement authorities caught the prisoner with a computer disk containing 280 pictures of juveniles engaged in sexually explicit conduct;

(4) a jury found the prisoner guilty of conspiring to trade in child pornography and possessing child pornography;

(5) the United States District Court for the District of Minnesota sentenced the prisoner to 87 months in Federal prison, to be served upon the completion of his 23-year State prison term; and

(6) there has been an explosion in the use of the Internet in the United States, further placing our Nation's children at risk of harm and exploitation at the hands of predators on the Internet and increasing the ease of trafficking in child pornography.

(b) **SENSE OF CONGRESS.**—Congress strongly urges State Governors, State legislators, and State prison administrators to prohibit unsupervised access to the Internet by State prisoners.

SEC. 4. SURVEY.

(a) **SURVEY.**—Not later than 6 months after the date of the enactment of this Act, the Attorney General shall conduct a survey of the States to determine to what extent each State allows prisoners access to any interactive computer service and whether such access is supervised by a prison official.

(b) **REPORT.**—The Attorney General shall submit a report to Congress of the findings of the survey conducted pursuant to subsection (a).

(c) **DEFINITION.**—For the purposes of this section, the term "State" means each of the 50 States and the District of Columbia.

105TH CONGRESS
1ST SESSION

H. CON. RES. 125

Expressing the sense of the Congress that each State should enact legislation regarding notification procedures necessary when a sexually violent offender is released.

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 1997

Mr. GUTKNECHT (for himself, Mr. LAMPSON, Mr. DEAL of Georgia, Mr. WALSH, Mr. FROST, Mr. HORN, Ms. PRYCE of Ohio, Mr. LIPINSKI, Mr. DIAZ-BALART, Mr. NEY, Mr. PETERSON of Minnesota, Mr. MCINTOSH, Ms. MOLINARI, Mr. DAVIS of Virginia, Ms. STABENOW, Mr. SCHIFF, Mr. LUTHER, Mr. BALDACCI, Mr. BENTSEN, Mr. FAZIO of California, Mr. DEUTSCH, Ms. LOFGREN, Mrs. ROUKEMA, Mrs. KELLY, Ms. CARSON, Mr. CRAMER, Mr. SANDLIN, Ms. MILLENDER-MCDONALD, Mr. CASTLE, Mr. UNDERWOOD, Mr. GRAHAM, and Mr. FOX of Pennsylvania) submitted the following concurrent resolution; which was referred to the Committee on Judiciary

CONCURRENT RESOLUTION

Expressing the sense of the Congress that each State should enact legislation regarding notification procedures necessary when a sexually violent offender is released.

Whereas States are now required to release certain relevant information to protect the public from sexually violent offenders; and

Whereas many States have not established guidelines regarding the notification and release of a sexually violent offender: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that each State should enact legislation based on the following model:

SECTION 1. ESTABLISHMENT OF ADVISORY BOARD FOR RISK ASSESSMENT.

(a) **ESTABLISHMENT.**—The State shall establish an Advisory Board for Risk Assessment (referred to in this Act as the "Board") which consists of not less than 5 members appointed by the Chief Executive Officer of the State.

(b) **DUTIES.**—The Board shall comply with the requirements and guidelines established for a State board under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 and the provisions of this Act.

(c) **MEMBERSHIP.**—Each member shall, by experience or training, have a personal interest or professional expertise in law enforcement, crime prevention, victim advocacy, criminology, psychology, parole, public education, or community relations.

(d) **TERM.**—The term of office of each member of such Board shall be determined by the Chief Executive Officer of the State in guidelines issued pursuant to this section.

(e) **VACANCY.**—Any member chosen to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term.

(f) **CHAIRPERSON.**—The Chief Executive Officer of the State shall designate 1 of the members of the Board as chairperson to serve in such capacity at the pleasure of the Officer or until the member's term of office expires and a successor is designated in accordance with law, whichever occurs first.

(g) **TERMINATION.**—Any member of the Board may be removed by the Chief Executive Officer for cause after an opportunity to be heard.

(h) **QUORUM.**—Except as otherwise provided by law, a majority of the Board shall constitute a quorum for the transaction of all business of the Board.

SEC. 2. GUIDELINES FOR TIER DETERMINATION.

(a) **IN GENERAL.**—The Chief Executive Officer of the State or a designee shall develop guidelines and procedures for use by the Board to assess the risk of a repeat offense by such sex offender and the threat posed to the public safety. Such guidelines shall be based upon the following:

(1) Criminal history factors indicative of high risk of repeat offense, including—

- (A) whether the sex offender has a mental abnormality;
- (B) whether the sex offender's conduct was found to be characterized by repetitive and compulsive behavior, associated with drugs or alcohol;
- (C) whether the sex offender served the maximum term;
- (D) whether the sex offender committed the felony sex offense against a child; and
- (E) the age of the sex offender at the time of the commission of the first sex offense.
- (2) Other factors to be considered in determining risk, including—
 - (A) the relationship between such sex offender and the victims;
 - (B) whether the offense involved the use of a weapon, violence, or infliction of serious bodily injury;
 - (C) the number, date, and nature of prior offenses;
 - (D) conditions of release that minimize risk of another offense, including whether the sex offender is under supervision, receiving counseling, therapy or treatment, or residing in a home situation that provides guidance and supervision;
 - (E) physical conditions that minimize risk of another offense, including advanced age or debilitating illness;
 - (F) whether psychological or psychiatric profiles indicate a risk of recidivism;
 - (G) the sex offender's response to treatment;
 - (H) recent behavior, including behavior while confined;
 - (I) recent threats or gestures against persons or expression of intent to commit additional offenses; and
 - (J) review of any victim impact statement.

(b) INFORMATION TRANSFER.—

(1) IN GENERAL.—Notwithstanding any other provision of law, any State or local correctional facility, hospital, or institution shall forward relevant information pertaining to a sex offender to be discharged, paroled, or released to the Board for review prior to the release or discharge for consideration by the Board in its recommendations. Information shall include the commitment file, medical file, and treatment file pertaining to such person.

(2) CONFIDENTIALITY.—All confidential records provided under paragraph (1) shall remain confidential, unless otherwise ordered by a court, by the lawful custodians of the records, or by another person duly authorized to release such information.

SEC. 3. BOARD RECOMMENDATIONS.

The Board shall use the guidelines established pursuant to section 2(a) to recommend to an appropriate court of the State 1 of the following 3 levels of notification:

(1) TIER I.—If the risk of a repeat offense is low, a tier 1 designation shall be given to such sex offender. In such case the designated law enforcement agency having jurisdiction and the law enforcement agency having had jurisdiction at the time of his conviction shall be notified in accordance with section 170101(b)(4) of the Violent Crime Control and Law Enforcement Act of 1994.

(2) TIER II.—If the risk of a repeat offense is moderate, a tier 2 designation shall be given to such sex offender. In such case the designated law enforcement agency having jurisdiction and the law enforcement agency having had jurisdiction at the time of conviction shall be notified and may notify any victim of the proposed release of such offender and any agency, organization, or group, serving individuals who have similar characteristics to the previous victim or victims of such offender. The notification may include the approximate address (by ZIP Code), background information relating to the crime, type of victim targeted, conviction, including release of a photograph of the offender, and any special conditions imposed on the offender.

(3) TIER III.—If the risk of a repeat offense is high and there exists a threat to the public safety, a tier 3 designation shall be given to such offender. In such case, the appropriate law enforcement agencies shall be notified of such an offender's release and may use the notification procedures described in paragraph (2), except that a precise address may be released and any relevant information necessary to protect the public concerning a specific person required to register under section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 shall be released.

SEC. 4. JUDICIAL DETERMINATION.

(a) NOTIFICATION LEVEL.—

(1) **IN GENERAL.**—An appropriate court of the State also shall make a determination with respect to the level of notification, after receiving a tier recommendation from the Board. In making the determination, the court shall review any statement by a victim or victims and any materials submitted by the sex offender. The court shall also allow the sex offender to appear and be heard, and inform the sex offender of the right to have counsel appointed if necessary.

(2) **APPEAL.**—A sex offender may appeal a determination made by the court made under paragraph (1) in accordance with State law.

(3) **NOTIFICATION AND REGISTRATION.**—The filing of the appeal shall not stay the designated law enforcement agency's notification actions unless the court orders otherwise. Such petition, if granted, shall not relieve the petitioner of the duty to register pursuant to section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 upon conviction of an offense requiring registration in the future.

(b) **REVERSAL.**—Upon the reversal of a conviction of a sexual offense, the court shall order the expungement of any records required to be kept pursuant to this Act.

SEC. 5. PENALTY FOR MISUSE OF REGISTRATION INFORMATION.

(a) **FINE.**—Any person who uses information disclosed pursuant to this Act in violation of the law shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

(b) **CIVIL ACTION.**—The State attorney general, a district attorney, or any person aggrieved by information disclosed in violation of the law is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for such action.

(c) **ADDITIONAL REMEDIES.**—The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law.

SEC. 6. JUVENILE OFFENDERS.

(a) **IN GENERAL.**—A juvenile residing in a State who has been adjudicated delinquent for any sex offense or attempted sex offense, or who has been convicted of any sex offense or attempted sex offense, or who has been acquitted by reason of insanity for any sex offense or attempted sex offense shall be required to comply with the registration requirements established pursuant to section 170101 of the Violent Crime Control and Law Enforcement Act of 1994.

(b) **YOUTH FACILITY.**—Any person who is discharged or paroled from a facility in another State that is equivalent to a Department of the Youth Authority to the custody of such a facility because of the commission or attempted commission of specified sex offenses, is required to register pursuant to section 170101 of the Violent Crime Control and Law Enforcement Act of 1994.

SEC. 7. OFFICIAL IMMUNITY FROM LIABILITY.

(a) **IMMUNITY.**—No official, employee, or agency, whether public or private, shall be subject to any civil or criminal liability for damages for any discretionary decision to release relevant and necessary information pursuant to this section, unless it is shown that such official, employee, or agency acted with gross negligence or in bad faith.

(b) **INFORMATION RELEASE.**—The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

(c) **FAILURE TO RELEASE INFORMATION.**—Nothing in this section shall be deemed to impose any civil or criminal liability upon or to give rise to a cause of action against any official, employee, or agency, whether public or private, for failing to release information as authorized in this Act unless it is shown that such official, employee, or agency acted with gross negligence or in bad faith.

SEC. 8. IDENTITY OF THE VICTIM.

Any information identifying the victim by name, birth date, address, or relation to the registrant shall be excluded from public access or dissemination.

SEC. 9. GENERAL STATE REQUIREMENTS.

The Chief Executive Officer of a State or designee shall establish reasonable notification requirements under this Act, including notification to an offender of any procedures for which the offender is required or is permitted to participate, including the hearing process, appeal rights, and submission of information to the Board.

SEC. 10. ADVISORY COUNCIL FOR COMMUNITY EDUCATION.

(a) **IN GENERAL.**—The Chief Executive Officer of a State shall appoint a voluntary advisory council to design a policy to assist communities in which a sex offender resides to plan and prepare for such a resident.

(b) **COMPOSITION.**—Each such advisory council shall include representation from—

- (1) law enforcement;
- (2) law enforcement organizations;
- (3) local corrections agencies;
- (4) victims groups; and
- (5) other interested members of the public.

(c) **DUTIES.**—In developing a policy pursuant to subsection (a), an advisory council should make recommendations that include—

- (1) the method of distributing community notification information;
- (2) methods of educating community residents at public meetings on how they can use such information to enhance their safety and the safety of their family;
- (3) procedures for ensuring that community members are educated regarding the right of the sex offender not to be subjected to harassment or criminal acts; and
- (4) other matters the council considers necessary to ensure the effective and fair administration of the community notification law.

SEC. 11. EXPUNGEMENT OF OUTDATED INFORMATION.

In accordance with section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, the department required to coordinate the sex offender registration program shall compile and update information regarding the offenders. Any offender whose duty to register has expired or who has been relieved of the duty to register shall be removed from any public database.

SEC. 12. EXCEPTIONAL CIRCUMSTANCES.

Nothing in this Act shall be construed to prevent law enforcement officers from notifying members of the public of individuals that pose a danger under circumstances that are not described in section 170101 of the Violent Crime Control and Law Enforcement Act of 1994 or under this Act.

SEC. 13. DEFINITIONS.

For purposes of this Act:

(1) The term "criminal offense against a victim who is a minor" means any criminal offense that consists of—

- (A) kidnapping of a minor, except by a parent;
- (B) false imprisonment of a minor, except by a parent;
- (C) criminal sexual conduct toward a minor;
- (D) solicitation of a minor to engage in sexual conduct;
- (E) use of a minor in a sexual performance;
- (F) solicitation of a minor to practice prostitution;
- (G) any conduct that by its nature is a sexual offense against a minor;

and

(H) an attempt to commit an offense described in any of subparagraphs

(A) through (H) if the State—

- (i) makes such an attempt a criminal offense; or
- (ii) chooses to include such an offense in those which are criminal offenses against a victim who is a minor for purposes of this section.

For purposes of this paragraph, conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.

(2) The term "sexually violent offense" means any criminal offense that consists of aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of title 18, United States Code, or as described in the State criminal code) or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse (as described in such sections of title 18, United States Code, or as described in the State criminal code).

(3) The term "mental abnormality" means a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.

(4) The term "predatory" means an act directed at a stranger, or a person with whom a relationship has been established or promoted for the primary purpose of victimization.

Any offense committed in another State, which if committed in the State at issue would be one of the above enumerated offenses, is considered a sexual offense for the purposes of this Act.

(5) The term "juvenile" has the meaning given such term under State law.



105TH CONGRESS
2D SESSION

H. R. 3494

To amend title 18, United States Code, with respect to violent sex crimes against children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 1998

Mr. McCOLLUM (for himself, Ms. DUNN, Ms. PRYCE of Ohio, Ms. GRANGER, Mrs. NORTHUP, Mrs. FOWLER, Mr. FRANKS of New Jersey, Mr. FOLEY, Mr. CUNNINGHAM, Mr. DEAL of Georgia, Mr. RAMSTAD, Mr. BARR of Georgia, Mr. CHABOT, Mr. DIAZ-BALART, Mr. GUTKNECHT, and Mr. LAMPSON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 18, United States Code, with respect to violent sex crimes against children, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Child Protection and Sexual Predator Punishment Act of 1998".

TITLE I—PROTECTING CHILDREN FROM SEXUAL PREDATORS AND COMPUTER PORNOGRAPHY

SEC. 101. CONTACTING MINORS FOR SEXUAL PURPOSES.

Section 2422 of title 18, United States Code, is amended by adding at the end the following:

"(c) Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States—

"(1) knowingly contacts an individual who has not attained the age of 18 years; or

"(2) knowingly contacts an individual, who has been represented to the person making the contact as not having attained the age of 18 years; for the purposes of engaging in any sexual activity, with a person who has not attained the age of 18 years, for which any person may be criminally prosecuted, or attempts to do so, shall be fined under this title or imprisoned not more than 5 years, or both."

SEC. 102. TRANSFER OF OBSCENE MATERIAL TO MINORS.

(a) IN GENERAL.—Chapter 71 of title 18, United States Code, is amended by adding at the end the following:

"§1470. Transfer of obscene material to minors

"Whoever, using the mail or any facility or means of interstate or foreign commerce—

"(1) knowingly transfers obscene matter to an individual who has not attained the age of 18 years, or attempts to do so; or

"(2) knowingly transfers obscene matter to an individual who has been represented to the transferor as not having attained the age of 18 years; shall be fined under this title or imprisoned not more than 5 years, or both."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 71 of title 18, United States Code, is amended by adding at the end the following new item:

"1470. Transfer of obscene material to minors."

SEC. 103. INCREASED PRISON SENTENCES FOR ENTICEMENT OF MINORS.

Section 2422 of title 18, United States Code, is amended—

(1) in subsection (a), by adding at the end "If the individual had not attained the age of 18 years at the time of the offense, the maximum imprisonment for an offense under this subsection is 10 years."; and

(2) in subsection (b), by striking "10" and inserting "15".

SEC. 104. INCREASED PENALTIES FOR CERTAIN ACTIVITIES RELATING TO MATERIAL INVOLVING THE SEXUAL EXPLOITATION OF MINORS OR CHILD PORNOGRAPHY AND TECHNICAL CORRECTION.

(a) INCREASED PENALTIES IN SECTION 2252.—Section 2252(b) of title 18, United States Code, is amended—

(1) in each of paragraphs (1) and (2), by striking "or chapter 109A" and inserting "chapter 109A, or section 2421, 2422, or 2423"; and

(2) in paragraph (2), by inserting "the offense consisted of the possession of 50 or more items of the sort described in subsection (a)(4) or" after "if".

(b) INCREASED PENALTIES IN SECTION 2252A.—Section 2252A(b)(2) of title 18, United States Code, is amended by inserting "the offense consisted of the possession of 50 or more images of the sort described in subsection (a)(4) or" after "if".

(c) TECHNICAL CORRECTION.—Section 2252(a) of title 18, United States Code, is amended so that paragraph (4) reads as follows:

"(4) either—

"(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country (as defined in section 1151 of this title), knowingly possesses—

"(i) 3 or more books, magazines, periodicals, films, video tapes, or other matter that contain any visual depiction, if—

"(I) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

"(II) such visual depiction is of such conduct; or

"(ii) any book, magazine, periodical, film, videotape, computer disk, or any other material that contains 3 or more visual depictions, if—

"(I) the producing of each visual depiction involves the use of a minor engaging in sexually explicit conduct; and

"(II) each visual depiction is of such conduct; or

"(B) knowingly possesses—

"(i) 3 or more books, magazines, periodicals, films, video tapes, or other matter that contain any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if—

"(I) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

"(II) such visual depiction is of such conduct; or

"(ii) any book, magazine, periodical, film, videotape, computer disk, or any other material that contains 3 or more visual depictions, if—

"(I) the producing of each visual depiction involves the use of a minor engaging in sexually explicit conduct; and

"(II) each visual depiction is of such conduct;".

SEC. 105. CRIMINAL FORFEITURE FOR SOLICITATION OF MINORS AND INTERSTATE PROSTITUTION.

Section 2253(a) of title 18, United States Code, is amended by inserting “, or who is convicted of an offense under section 2421, 2422, or 2423 of this title,” after “2252 of this chapter”.

SEC. 106. PRETRIAL DETENTION OF CHILD SEX OFFENDERS.

Section 3142(f)(1) of title 18, United States Code, is amended—

- (1) by striking “or” at the end of each of subparagraphs (C) and (D); and
- (2) by adding at the end the following:
 “(E) an offense under chapter 109A, 110, or 117, involving child pornography or against a minor; or”.

SEC. 107. INCREASED PRISON SENTENCES.

Subsection (b) of section 2422 of title 18, United States Code, is amended by adding at the end the following: “If in the course of committing the offense under this subsection, the defendant used a computer to transmit a communication to the minor, the minimum term of imprisonment for the offense under this subsection is 3 years.”

SEC. 108. REPEAT OFFENDERS IN TRANSPORTATION OFFENSE.

(a) **GENERALLY.**—Chapter 117 of title 18, United States Code, is amended by adding at the end the following:

“§ 2425. Repeat offenders

“(a) The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term otherwise provided by this chapter.

“(b) As used in this section, the term ‘prior sex offense conviction’ means a conviction for an offense—

“(1) under this chapter or chapter 109A or 110; or

“(2) under State law for an offense consisting of conduct that would have been an offense under a chapter referred to in paragraph (1) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States or in any Territory or Possession of the United States.”

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 117 of title 18, United States Code, is amended by adding at the end the following new item:

“2425. Repeat offenders.”.

TITLE II—PUNISHING SEXUAL PREDATORS

SEC. 201. SENTENCING ENHANCEMENT IN SECTION 2423 CASES.

(a) **IN GENERAL.**—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend the sentencing guidelines to provide a sentencing enhancement for any offense listed in section 2423 of title 18, United States Code.

(b) **INSTRUCTION TO COMMISSION.**—The Sentencing Commission shall ensure that the sentences, guidelines, and policy statements for offenders convicted of offenses described in subsection (a) are appropriately severe and reasonably consistent with other relevant directives and with other guidelines.

SEC. 202. INCREASED PENALTIES FOR TRANSPORTATION OF MINORS OR ASSUMED MINORS FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES.

Section 2423 of title 18, United States Code, is amended to read as follows:

§ “2423. Transportation of minors and assumed minors

“(a) **TRANSPORTATION WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY.**—A person who knowingly—

“(1) transports an individual who has not attained the age of 18 years; or

“(2) transports an individual, under the belief that the individual has not attained the age of 18 years;

in interstate or foreign commerce, or in any Territory or Possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title or imprisoned not more than 15 years, or both.

"(b) TRAVEL WITH INTENT TO ENGAGE IN SEXUAL ACT WITH A JUVENILE.—A person who travels in interstate commerce, or conspires to do so, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, or conspires to do so, for the purpose of engaging in any sexual act (as defined in section 2246) with another person who has not attained the age of 18 years, or whom the person believes has not attained the age of 18 years, that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States shall be fined under this title, imprisoned not more than 15 years, or both."

SEC. 203. INCREASED PENALTIES FOR ABUSIVE SEXUAL CONTACT.

Section 2244 of title 18, United States Code, is amended by adding at the end the following:

"(c) OFFENSES INVOLVING YOUNG CHILDREN.—If the sexual contact that violates this section is with an individual who has not attained the age of 12 years, the maximum term of imprisonment that may be imposed for the offense shall be twice that otherwise provides in this section."

SEC. 204. PUNISHMENT FOR REPEAT OFFENDERS.

Section 2241 of title 18, United States Code, is amended by inserting after subsection (d) the following:

"(e) PUNISHMENT FOR REPEAT OFFENDERS.—(1) Whoever has twice previously been convicted of a serious State or Federal sex crime and who—

"(A) violates this section; or

"(B) in a circumstance described in paragraph (2) of this subsection, engages in conduct that would have violated this section if the conduct had occurred in the special maritime and territorial jurisdiction of the United States; shall be imprisoned for life.

"(2) The circumstance referred to in paragraph (1) of this subsection is that—

"(A) the person engaging in such conduct traveled in interstate or foreign commerce or used the mail or any facility or means of interstate or foreign commerce in furtherance of the offense; or

"(B) such conduct occurs in or affects interstate or foreign commerce and would have violated this section if the conduct had occurred in the special maritime and territorial jurisdiction of the United States.

"(f) SERIOUS STATE OR FEDERAL SEX CRIME.—For the purposes of subsections (e) and (f), the term serious State or Federal sex crime means a State or Federal offense for conduct which—

"(i) is an offense under this section or section 2242 of this title; or

"(ii) would have been an offense under either of such sections if the offense had occurred in the special maritime or territorial jurisdiction of the United States."

SEC. 205. REPEAT OFFENDERS IN SEXUAL ABUSE CASES.

Section 2247 of title 18, United States Code, is amended to read as follows:

"§ 2247. Repeat offenders

"(a) The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term otherwise provided by this chapter.

"(b) As used in this section, the term 'prior sex offense conviction' has the meaning given that term in section 2425."

SEC. 206. CIVIL REMEDY FOR PERSONAL INJURIES RESULTING FROM CERTAIN SEX CRIMES AGAINST CHILDREN.

Section 2255 of title 18, United States Code, is amended by striking "2251 or 2252" and inserting "2241(c), 2243, 2251, 2252, 2421, 2422, or 2423".

SEC. 207. ELIMINATION OF REDUNDANCY AND AMBIGUITIES.

(a) REDUNDANCY.—Section 2243(a) of title 18, United States Code, is amended by striking "crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or".

(b) MAKING CONSISTENT LANGUAGE ON AGE DIFFERENTIAL.—Section 2241(c) of title 18, United States Code, is amended by striking "younger than that person" and inserting "younger than the person so engaging".

(c) DEFINITION OF STATE.—Section 2246 of title 18, United States Code, is amended—

- (1) in paragraph (5), by striking the period and inserting a semicolon; and
- (2) by adding a new paragraph as follows:

"(6) the term 'State' means a State of the United States, the District of Columbia, and any commonwealth, possession, or territory of the United States."

TITLE III—FEDERAL INVESTIGATIONS OF SEX CRIMES AGAINST CHILDREN AND SERIAL KILLERS

SEC. 301. ADMINISTRATIVE SUBPOENAS.

(a) IN GENERAL.—Chapter 203 of title 18, United States Code, is amended by adding at the end the following:

"§ 3064. Administrative subpoenas

"(a) AUTHORIZATION OF USE.—In an investigation of an alleged violation of section 2241(c), 2243, 2421, 2422, or 2423 of this title where a victim is an individual who has not attained the age of 18 years, the Attorney General may subpoena witnesses, compel the production of any records (including books, papers, documents, electronic data, and other tangible things which constitute or contain evidence) which the Attorney General finds relevant or material to the investigation. The attendance of witnesses and the production of records may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place of hearing, except that a witness shall not be required to appear at any hearing more than 500 miles distant from the place where the witness was served with a subpoena. Witnesses summoned under this section shall be paid the same fees and commissions that are paid witnesses in the courts of the United States.

"(b) SERVICE.—A subpoena issued under this section may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by personal delivery of the subpoena to that person or by certified mail with return receipt requested. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the subpoena to an officer, to a managing or general agent, or any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

"(c) ENFORCEMENT.—In the case of contumacy by or the refusal to obey a subpoena issued to any person under this section, the Attorney General may invoke the aid of any court of the United States within the jurisdiction of which the investigation is carried on, or of which the person is an inhabitant or in which the person carries on business or may be found, to compel compliance with the subpoena. The court may issue an order requiring the subpoenaed person to appear before the Attorney General to produce records, if so ordered, or to give testimony regarding the matter under investigation. Any failure to obey the order of the court may be punished by the court as contempt thereof. All process in any such case may be served in any judicial district in which such person may be found."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 203 of title 18, United States Code, is amended by adding at the end the following new item:

"3064. Administrative subpoenas."

SEC. 302. KIDNAPPING.

(a) 24-HOUR RULE.—Section 1201(b) of title 18, United States Code, is amended by adding at the end the following: "However, the fact that the presumption under this section has not yet taken effect does not preclude a Federal investigation of a possible violation of this section before the twenty-four hour period has ended."

(b) JURISDICTIONAL ELEMENTS.—Section 1201(a) of title 18, United States Code, is amended—

(1) by striking "or" at the end of paragraph (4); and

(2) by adding after paragraph (5) the following:

"(6) the mail or any facility or means of interstate or foreign commerce is used in furtherance of the offense; or

"(7) the offense affects interstate or foreign commerce, or would do so if the offense were consummated;"

(c) CLARIFICATION OF ELEMENT OF OFFENSE.—Section 1201(a) of title 18, United States Code, is amended by inserting ", regardless of whether such person was alive

when transported across a State boundary provided the person was alive when the transportation began" before the semicolon at the end of paragraph (1);

SEC. 303. MURDER.

(a) NEW OFFENSE OF CROSSING STATE LINES WITH INTENT TO COMMIT MURDER.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following:

"§ 1123. Crossing State lines with intent to commit murder

"(a) Whoever travels across a State line or enters or leaves Indian country with the intent to engage in conduct that constitutes murder in the first degree (as defined in section 1111) shall be punished by imprisonment for life, and if death results, may be punished by death.

"(b) No prosecution for any offense described in this section shall be undertaken by the United States except on written certification of the Attorney General or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions that, in the judgment of the certifying official, the conduct intended to be engaged in was a serial killing. A certification under this subsection shall not be reviewable in any court.

"(c) As used in this section—

"(1) the term 'State' means a State of the United States and also includes the District of Columbia, and any commonwealth, territory, or possession of the United States; and

"(2) the term 'serial killing' means one in a series of 3 or more killings during separate criminal episodes, at least one of which is committed in the United States having common characteristics that suggest the reasonable possibility the killings were committed by the same actor or actors."

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1123. Crossing State lines with intent to commit murder."

SEC. 304. MORGAN P. HARDIMAN CHILD ABDUCTION AND SERIAL MURDER INVESTIGATIVE RESOURCES CENTER.

(a) ESTABLISHMENT.—Not later than 90 days after the date of the enactment of this Act, the Attorney General shall establish a Child Abduction and Serial Murder Investigative Resources Center to be known as the "Morgan P. Hardiman Child Abduction and Serial Murder Investigative Resources Center" (hereinafter in this section referred to as the "CASMIRC").

(b) PURPOSE.—The purpose of this section is to establish a Federal Bureau of Investigation Child Abduction and Serial Murder Investigative Resources Center managed by the FBI's Critical Incident Response Group's National Center for the Analysis of Violent Crime (NCAVC) and multidisciplinary resource teams in FBI field offices to provide investigative support through the coordination and provision of Federal law enforcement resources, training, and application of other multidisciplinary expertise, to assist Federal, State, and local authorities in matters involving child abductions, mysterious disappearance of children, child homicide, and serial murder across the country. The CASMIRC shall be co-located with the NCAVC.

(c) DUTIES OF THE CASMIRC.—The CASMIRC shall perform such duties as the Attorney General deems appropriate to carry out the purposes of the CASMIRC, including but not limited to—

(1) identifying, developing, researching, acquiring, and refining multidisciplinary information and specialties to provide for the most current expertise available to advance investigative knowledge and practices used in child abduction, mysterious disappearance of children, child homicide, and serial murder investigations;

(2) providing advice and coordinating the application of current and emerging technical, forensic, and other Federal assistance to Federal, State, and local authorities in child abduction, mysterious disappearances of children, child homicide, and serial murder investigations;

(3) providing investigative support, research findings, and violent crime analysis to Federal, State, and local authorities in child abduction, mysterious disappearances of children, child homicide, and serial murder investigations;

(4) providing, if requested by a Federal, State, or local law enforcement agency, on site consultation and advice in child abduction, mysterious disappearances of children, child homicide and serial murder investigations;

(5) coordinating the application of resources of pertinent Federal law enforcement agencies, and other Federal entities including, but not limited to, the

United States Customs Service, the Secret Service, the Postal Inspection Service, and the United States Marshals Service, as appropriate, and with the concurrence of the agency head to support Federal, State, and local law enforcement involved in child abduction, mysterious disappearance of a child, child homicide, and serial murder investigations;

(6) conducting ongoing research related to child abductions, mysterious disappearances of children, child homicides, and serial murder, including identification and investigative application of current and emerging technologies, identification of investigative searching technologies and methods for physically locating abducted children, investigative use of offender behavioral assessment and analysis concepts, gathering statistics and information necessary for case identification, trend analysis, and case linkages to advance the investigative effectiveness of outstanding abducted children cases, develop investigative systems to identify and track serious serial offenders that repeatedly victimize children for comparison to unsolved cases, and other investigative research pertinent to child abduction, mysterious disappearance of a child, child homicide, and serial murder covered in this section;

(7) working under the Federal Bureau of Investigation's NCAVC in coordination with the National Center For Missing and Exploited Children (NCMEC) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) to provide appropriate training to Federal, State, and local law enforcement in matters regarding child abductions, mysterious disappearances of children, child homicides; and

(8) establishing a centralized repository based upon case data reflecting child abductions, mysterious disappearances of children, child homicides and serial murder submitted by State and local agencies, and an automated system for the efficient collection, retrieval, analysis, and reporting of information regarding CASMIRC investigative resources, research, and requests for and provision of investigative support services.

(d) APPOINTMENT OF PERSONNEL TO THE CASMIRC.—

(1) SELECTION OF MEMBERS OF THE CASMIRC AND PARTICIPATING STATE AND LOCAL LAW ENFORCEMENT PERSONNEL.—The Director of the Federal Bureau of Investigation shall appoint the members of the CASMIRC. The CASMIRC shall be staffed with FBI personnel and other necessary personnel selected for their expertise that would enable them to assist in the research, data collection, and analysis, and provision of investigative support in child abduction, mysterious disappearance of children, child homicide and serial murder investigations. The Director may, with concurrence of the appropriate State or local agency, also appoint State and local law enforcement personnel to work with the CASMIRC.

(2) STATUS.—Each member of the CASMIRC (and each individual from any State or local law enforcement agency appointed to work with the CASMIRC) shall remain as an employee of that member's or individual's respective agency for all purposes (including the purpose of performance review), and service with the CASMIRC shall be without interruption or loss of civil service privilege or status and shall be on a nonreimbursable basis, except where appropriate to reimburse State and local law enforcement for overtime costs for an individual appointed to work with the resource team. Additionally, reimbursement of travel and per diem expenses will occur for State and local law enforcement participation in resident fellowship programs at the NCAVC when offered.

(3) TRAINING.—CASMIRC personnel, under the guidance of the Federal Bureau of Investigation's National Center for the Analysis of Violent Crime and in consultation with the NCMEC, shall develop a specialized course of instruction devoted to training members of the CASMIRC consistent with the purpose of this section. The CASMIRC shall also work with the NCMEC and OJJDP to develop a course of instruction for State and local law enforcement personnel to facilitate the dissemination of the most current multidisciplinary expertise in the investigation of child abductions, mysterious disappearances of children, child homicides, and serial murder of children.

(e) REPORT TO CONGRESS.—One year after the establishment of the CASMIRC, the Attorney General shall provide a report to Congress that describes the goals and activities of the CASMIRC. The report shall also contain information regarding the number and qualifications of the members appointed to the CASMIRC, provision for equipment, administrative support, and office space for the CASMIRC, and projected resource needs for the CASMIRC.

(f) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated to carry out this section such sums as may be necessary for fiscal year 1999 and each of the two succeeding fiscal years.

(g) CONFORMING REPEAL.—Subtitle C of title XVII of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 5776a et seq.).

105TH CONGRESS
1ST SESSION

H. R. 305

To provide protection from sexual predators.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Ms. SLAUGHTER (for herself, Mr. ACKERMAN, Mr. FAZIO of California, Mr. Frost, Mr. GREEN, Mr. HINCHEY, Mr. HOLDEN, Ms. NORTON, Ms. JACKSON-LEE of Texas, Mrs. LOWEY, Mr. MCINTYRE, Ms. MCKINNEY, Mrs. MALONEY of New York, Mr. MANTON, Mrs. MEEK of Florida, Mr. MENENDEZ, Mrs. MINK of Hawaii, Mr. MORAN of Virginia, Mrs. MYRICK, Mr. OWENS, Ms. PELOSI, Mr. PORTER, and Mr. SCHUMER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide protection from sexual predators.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protection from Sexual Predators Act of 1997".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) rape and sexual assaults continue to be serious threats to the safety of communities across America;

(2) sexual offenders are much more likely than any other category of criminals to repeat their crimes again and again, even after serving time in prison;

(3) the average rape sentence is just 10½ years, and the average time served is half of that, approximately 5 years; and

(4) repeat sexual offenders frequently strike in more than one State and, while States have primary responsibility for the prosecution of sexual offenders, the option of Federal prosecution provides a needed additional tool to safeguard communities victimized by these individuals.

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) States should more seriously consider the relatively high recidivism rate of sexual offenders when deciding whether to plea bargain with a first-time sexual offender and whether to grant parole to sexual offenders; and

(2) States should review their treatment and parole supervision programs for sexual offenders to assure that these programs are fulfilling their goals, and, if they are not, these programs should be immediately replaced or abandoned.

SEC. 3. FEDERAL JURISDICTION OVER RAPE AND SEXUAL ASSAULT CASES.

Section 2241 of title 18, United States Code, is amended by adding at the end the following:

"(e) PUNISHMENT FOR SEXUAL PREDATORS.—(1) Whoever, in a circumstance described in paragraph (2) of this subsection—

"(A) violates this section; or

"(B) engages in conduct that would violate this section, if the conduct had occurred in the special maritime and territorial jurisdiction of the United States, and—

"(i) that conduct is in interstate or foreign commerce;

"(ii) the person engaging in that conduct crossed a State line with intent to engage in the conduct; or

"(iii) the person engaging in that conduct thereafter engages in conduct that is a violation of section 1073(1) with respect to an offense that consists of the conduct so engaged in;

shall be imprisoned for life.

"(2) The circumstance referred to in paragraph (1) of this subsection is that the defendant has previously been convicted of another State or Federal offense for conduct which—

"(A) is an offense under this section or section 2242 of this title; or

"(B) would have been an offense under either of such sections if the offense had occurred in the special maritime or territorial jurisdiction of the United States."

SEC. 4. ADDITIONAL CONDITION FOR TRUTH IN SENTENCING GRANTS.

Section 20104 of the Violent Crime Control and Law Enforcement Act of 1994 is amended by adding at the end the following:

"(c) **ADDITIONAL REQUIREMENT.**—A State is not eligible for a grant under this section unless such State has provided assurances to the Attorney General that such State has in effect laws which allow the court to impose a sentence of life in prison without parole on a defendant in a criminal case who is convicted of a State offense for conduct that—

"(1) is an offense under section 2241 or 2242 of title 18, United States Code;

or

"(2) would have been an offense under either of such sections if the offense had occurred in the special maritime or territorial jurisdiction of the United States;

after having previously been convicted of another State or Federal offense for conduct that was an offense described in paragraph (1) or (2)."

SEC. 5. STUDY OF PERSISTENT SEXUAL PREDATORS.

The National Institute of Justice, either directly or through grant, shall carry out a study of persistent sexual predators. Not later than one year after the date of the enactment of this Act, such Institute shall report to Congress and the President the results of such study. Such report shall include—

(1) a synthesis of current research in psychology, sociology, law, criminal justice, and other fields regarding persistent sexual offenders, including—

(A) common characteristics of such offenders;

(B) recidivism rates for such offenders;

(C) treatment techniques and their effectiveness;

(D) responses of offenders to treatment and deterrence; and

(E) the possibility of early intervention to prevent people from becoming sexual predators; and

(2) an agenda for future research in this area.



Mr. McCOLLUM. Mrs. Boehle, please proceed. Your entire testimony will be admitted into the record without objection.

STATEMENT OF DEBORAH NIEMANN-BOEHLE, CHICAGO, IL

Ms. NIEMANN-BOEHLE. Thank you. As a journalist, I am proud to be able to practice my freedom of speech every day as I sit down at my computer. Last year when the Communications Decency Act was struck down, I saw no problem with that, and I naively thought that every American should be allowed freedom of speech on the Internet. It never occurred to me that that freedom could be abused to put a child's life in danger.

My liberal opinion about freedom of speech literally changed within a split second as my husband read to me the messages that he had found on the Internet that said in very vulgar terms that our daughter was having sex with him and that she wanted to

have sex with other men. The messages went on to say that she has pictures for sale and that men should call her 24 hours a day, and they were posted on 14 different news groups such as erotica.teen and luciferslegions. At last, we knew why we had been receiving phone calls for the past month from men who were asking for our 9-year-old daughter by name. We also knew who had done this but soon we would learn that it didn't matter.

My husband called the police immediately and was told that little could be done. That night, I faxed letters to the Chief of Police, the State police, and the FBI. The next morning, I drove my children to school and explained to the principal what had happened. She agreed to be especially vigilant and to call the police immediately if anyone suspicious was seen around the school.

I then went home and spent the entire day on the telephone. I didn't even eat lunch. The local police said to call the FBI. The FBI said to call the local police. The State police and the State's Attorney said they couldn't do anything unless the local police called them.

Can you image my frustration at this point? My daughter's life was in danger, and everyone kept passing the buck.

This was the beginning of a nightmare that no parent should have to endure. The police advised us to move for two reasons. First, any pedophile in the world could use the reverse directory and maps on the Internet to find our house, and then they could come looking for our daughter. She could be raped, abducted, or even killed. Second, the person who posted those messages lived across the street from us.

So, we left our friends, our church, our children's school, and my home business, and we moved. This has caused us untold stress as well as many financial difficulties, and absolutely nothing has happened to the person that did this.

In my mind, the worst tragedy of all was that we had to explain to our 9-year-old daughter that there were men out there who wanted to have sex with her, and that's why they were calling our house 24 hours a day. She cried for an hour, and all I could do was to hold her and cry with her. She kept asking me why the police wouldn't do anything to Gary Rogers, and all I could say was there's not a law, and you can't put someone in jail if there isn't a law.

For the next month until we moved, she was no longer allowed to walk to friends' houses or ride her bike in the neighborhood or even walk out the front door alone. We were trying to keep her safe from an enemy that we didn't even know. A part of her childhood was stolen, and it can never be given back to her.

When this first happened to us, we thought that it was unique, but I have since spoken with another family that has lived through this same hellish nightmare. I can only imagine how many other families have lived through this but gave up when law enforcement told them that nothing can be done. We don't need any more laws named after dead little girls. The Constitution was written to protect citizens, not to put us at risk. I know there is a price that we pay for our freedom, but I do not believe that we should pay with the lives of children. Our society has already decided that children

deserve special protection. Although pornography is not illegal, child pornography is.

Freedom of speech is an important and basic right of all Americans, but no one should have the right to put a child's life in danger by abusing that freedom of speech on the Internet. We cannot continue to give pedophiles cart blanche use of the Internet as their newest stalking grounds. I have received letters from children who wrote that of course there should be laws to protect kids, and in preparation for today, I asked my daughter what message she would like for me to give you, and she said "This law must be passed to protect children from the mean, sick people who use the Internet." Thank you.

[The prepared statement of Mrs. Niemann-Boehle follows:]

PREPARED STATEMENT OF DEBORAH NIEMANN-BOEHLE, CHICAGO, IL

As a journalist, I am proud to be able to practice my freedom of speech every day as I sit down at my computer. Last year, when the Communications Decency Act was struck down by the Supreme Court, I saw no problem with that, and I naively thought that every American should have full freedom of speech on the Internet. It never occurred to me that someone could abuse that freedom of speech on the Internet to put a child's life in danger.

My liberal opinion about freedom of speech literally changed within a split second as my husband read to me the messages that he had found on the Internet that said—in very vulgar terms—that our daughter was having sex with him and that she wanted to have sex with other men. The messages went on to say that she had pictures for sale and that men should call her 24 hours a day. The messages were posted on 14 different news groups, such as "erotica.teen" and "luciferslegions." At last we knew why we had been receiving phone calls for the past month from men who were asking for our 9-year-old daughter by name. We also knew who had done this, but soon we would learn that it didn't matter.

My husband called the police immediately. He was told that little could be done. That night, I faxed letters to the local chief of police, the state police and the FBI. The next morning I drove my children to school and told the principal what had happened. She agreed to be especially vigilant and to call the police immediately if anyone suspicious was seen around the school. I then went home and spent the entire day on the telephone. I didn't even eat lunch. The local police said to call the FBI. The FBI said to call the local police. The state police and the state's attorney said they couldn't do anything unless the local police contacted them. Can you imagine my frustration at this point? My daughter's life was in danger and everyone kept "passing the buck."

This was the beginning of a nightmare that no parents should ever have to endure. The police advised us to move for two reasons: First, any pedophile in the world could use the reverse directory and maps on the Internet to find our house, and they could come looking for our daughter. She could be raped, abducted or even killed. Second, the person who posted those messages lived across the street from us. So, we left our friends, our church, our children's school and my home business, and we moved. This has caused us untold stress as well as many financial difficulties and absolutely nothing has happened to the person who put us through this.

In my mind, the worst tragedy of all was that we had to explain to our 9-year-old daughter that there were men out there who wanted to have sex with her and that's why they were calling our house night and day. She cried for an hour, and she wanted to know why the police wouldn't do anything to Gary Rogers. All I could do was hold her and cry with her and tell her that there wasn't a law, and you can't put someone in jail if there isn't a law. For the next month, until we moved, she was no longer allowed to walk to friends' houses or ride her bike in the neighborhood or even walk out the front door alone. We were trying to keep her safe from an enemy that we didn't even know. A part of her childhood was stolen, and it can never be given back to her.

When this first happened to us, we thought that it was unique, but I have since spoken with another family who has lived through the same hellish nightmare, and they did not even have Internet access. I can only imagine how many other families have lived through this, but gave up when they were told by law enforcement that nothing could be done. We don't need any more laws named after dead little girls.

The Constitution was written to protect citizens, not to put us at risk. I know there is a price we pay for our freedom, but I do not believe that we should pay with the lives of children. Our society has already decided that children deserve special protection. Although pornography is not illegal, child pornography is. Although it is not illegal for consenting adults to have sex, it is illegal for an adult to have sex with a child. Freedom of speech is an important and basic right of all Americans, but no one should have the right to put a child's life in danger by abusing that freedom on the Internet.

We cannot continue to give pedophiles carte blanche use of the Internet as their newest stalking grounds. I have received letters from children who wrote that "of course there should be laws to protect kids" and in preparation for today, I asked my daughter what message she would like for me to give you, and she said, "This law must be passed to protect children from mean, sick people who use the Internet."

Mr. MCCOLLUM. Thank you, Mrs. Boehle.

Mr. Weller?

STATEMENT OF HON. JERRY WELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. WELLER. Well, thank you, Mr. Chairman, and as a result of the case that was outlined by Mrs. Boehle, when she contacted me last fall after her daughter was targeted and a victim of an evil Internet prank, I introduced H.R. 2815, Protecting Children from Internet Predators Act, and you've heard her testimony.

First, I want to commend Mrs. Boehle for her bravery in stepping forward to, frankly, become an advocate on this issue. I remember the day that she contacted me. She was extremely upset, frustrated, really didn't know what to do, and, of course, turned to her local legislator for help. But the point is that, if you can imagine what it would be like for any parent, all hours of the day or night; strange men calling asking for your 9-year-old daughter by her full name, and as she indicated, after several of these calls, they became pretty suspicious; started to do some investigative work of their own; discovered that their daughter's full name, their home town, phone number was posted on the Internet with a message that would attract pedophiles from all over the country.

As a result of those messages, they started receiving many, many phone calls over a long period of time, and they discovered, of course, as a result of this, that not only were they getting these phone calls, but a pedophile could then use that telephone number and then obtain the address as well as a map on how to come to the Boehle home in Joliet, and out of their fear for the safety for their own children, Mrs. Boehle and her husband and her children literally uprooted their lives to escape the fear that a pedophile would show up at their door as a result of these messages that had been posted on the Internet.

So, after being contacted by Mrs. Boehle and, of course, communicating with several other individuals, we convened a meeting with local law enforcement, State and local enforcement in Illinois as well as Illinois attorney general, Jim Ryan, trying to decide what to do. Clearly, there was no law in place that gave law enforcement the tool to go after this type of slimeball who would use the Internet to prey on children and as a result of that, we introduced the Protecting Children's from Internet Predators Act.

Some would say this may be a unique case, but as Mrs. Boehle has indicated, we've been contacted by several other families

who've experienced a similar situation where their child has been listed on the Internet with a telephone number and then, of course, been targeted.

As was mentioned, current law does not protect children in this type of situation. It does not protect children from those type of people who would put a child's name on the Internet soliciting sexual contacts, and that's the difference here. This is where a child, in this case, Mrs. Boehle's 9-year-old little girl, was not using the Internet. She was not communicating with anyone. Instead, someone put her name on the Internet with her home phone number suggesting that pedophiles contact her and solicit her for sex.

H.R. 2815, the Protecting Children Against Internet Predators Act, would prohibit the use of the Internet to target children for sexually explicit contacts, and, Mr. Chairman, I, of course, assure you that our legislation is not intended to usurp anyone's constitutional rights or their freedom of speech. Instead, this legislation's intended to protect children and those who would prey on them using the latest technology, and that's why, Mr. Chairman, I'm so anxious to work with you and this subcommittee to ensure that we have the type of protections in the law which we believe we provide with the Protecting Children Against Internet Predators Act legislation, H.R. 2815.

So, I look forward to working with you. I want to thank you so much for the opportunity for Mrs. Boehle to come forward and to testify and advocate for this concern.

[The prepared statement of Mr. Weller follows:]

PREPARED STATEMENT OF HON. JERRY WELLER, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF ILLINOIS

Thank you Chairman McCollum and members of the subcommittee for allowing me to testify today on H.R. 2815, the Protecting Children From Internet Predators Act. I introduced this legislation last fall after I was contacted by a constituent whose daughter had fallen victim to an evil Internet prank. Mrs. Deborah Boehle, the little girl's mother is here with us today—you just heard her testimony. I would like to praise Deborah Boehle for her bravery on this issue, and thank her for coming to Washington today to share her story.

Mrs. Boehle contacted me upset, and frustrated after she had been told by numerous law enforcement agencies that there was really nothing that can be done to help. The Boehles began receiving phone calls at their home at all hours of the night. People were asking for their 9 year old daughter by name. After several calls, they became suspicious and started to do some investigative work on their own. Mr. Boehle eventually discovered that his daughters name, home town and phone number had been posted on an Internet site targeted to pedophiles. The messages read as if the young girl herself had posted the messages soliciting sex, and also indicated that explicit pictures were available. It was as a result of these messages that the family started receiving phone calls. The family discovered that in a very short time, a pedophile could figure out their exact address and even get directions to their home. Out of fear for the safety of their children, the Boehles were forced to pick up and move. They left their home, their church, their schools—their community. From hearing her testimony, you can now understand how devastating this has been on their children and their family.

Last year, after having spoken with Mrs. Boehle on several occasions, I convened a meeting of state and local law enforcement officials to discuss possible solutions and formulate a law which would enable us to go after these wackos who target young children. As a result, I introduced H.R. 2815, the Protecting Children From Internet Predators Act.

This may sound like a very unique case, and one might think this doesn't happen very often. Well, since Deborah's story has been in the news, I have been contacted by another constituent who had almost an identical experience. This father called to tell me that someone had put his daughter's name on the Internet asking for sex. I have also been contacted by another mother from Illinois who experienced a simi-

lar situation. These are just a few cases that I have heard about in my district. It is quite obvious that this type of Internet predator is becoming more common, and I wouldn't be surprised to hear that there are many other families in similar situations.

Unfortunately, current law does not protect children from these slimeballs who would put their name on the Internet soliciting sexual contacts. That's what my bill intends to correct. H.R. 2815 would prohibit the use of the Internet to target children for sexually explicit contacts. I assure you, this bill is not intended to usurp anyone's Constitutional rights. It is intended to protect children from Internet predators. Mr. Chairman, I would be willing to work with you to make sure that this lack of protection in the law is corrected. I welcome your input and look forward to working with you to make sure that when this happens in the future, that there is somewhere for the families to turn.

Mr. MCCOLLUM. Mr. Weller, we are very appreciative of what you've said. And, Mrs. Boehle, we certainly appreciate the fact that you've been willing to come and testify about a subject that obviously is sensitive, to be an advocate—as Mr. Weller said—and to express the concerns all of us have when children are being preyed upon over the Internet right now which is just a terribly difficult thing for lots of families, not just in the example you gave but in many related ways.

I have only one question, Mr. Weller. It has to do with the fact the Department of Justice has sent us a letter view that indicates their belief that the coercion of a minor statute, 18 U.S.C. 2422(b) already punishes individuals who attempt to use the Internet to persuade a minor to engage in illegal sexual activity. Do you think that would have applied in Mrs. Boehle's case? Is that sufficient, and why is your bill needed in light of that?

Mr. WELLER. I believe it would not, and that's why this legislation is necessary. I think Mrs. Boehle can best explain why. She discussed this in her testimony.

Ms. NIEMANN-BOEHLE. This is a situation that until the Internet was invented would have been impossible. Because of the broad scope of the Internet, people can now advertise children on a huge scale. Before this, all you would have had is somebody, perhaps, sending letters to a few people or writing something on a bathroom wall.

In every other mass media situation, people have to go through a gatekeeper such as a newspaper editor or a television producer, and those people are not going to put something like this out there so that millions of people can see it or read it. In this situation, though, the Internet is wide open to anybody that wants to get on there, and because they can advertise a child, they didn't need to coerce my daughter. She never saw the messages. She never spoke to the person who put these messages on there. This is a situation where a third party goes online and advertises a child—not for money because then that would be covered also by statute—but just advertises a child saying, "I'm available for sex," and in the other situation where the parents contacted me, again, someone went online and pretended to be their daughter saying, "I want to have sex with anybody, male or female—call me," and listed her name and phone number in chat rooms, and the family was inundated by phone calls.

So, it's not something that's covered nor could it have been, because no one could have imagined the scope of the Internet and the fact that something like this could be done on such a grand scale

until the Internet became as widely used as it is today, and the last most recent count I've seen is that over 20 million computers are hooked up to the Internet, and the Naperville Police Department in Illinois that does a lot of Internet crime estimates 40 million users.

Mr. MCCOLLUM. That's quite remarkable. I think your point is extremely well made.

Do any of my colleagues have questions of Mrs. Boehle? Mr. Buyer? Mr. Gekas?

Mr. GEKAS. Not so with Mrs. Boehle but with our colleague. In your encounters in trying to develop this legislation, did you encounter any assertion on any part of legislative counsel or the Illinois authorities about the possible unconstitutionality of your measure?

Mr. WELLER. Well, we've been working, of course, with the Illinois attorney general, Jim Ryan, and local law enforcement. Obviously the freedom of expression and speech, and your ability to say what you would like is something that we all want to protect, but in this case you have a situation where someone was intentionally trying to harm a child, and under our laws, you know, pedophilia is a crime; child pornography is a crime, and here is a case where someone intentionally was trying to harm a child, a little girl. This was not calling the little girl a bad name. They were clearly soliciting pedophiles to contact this little girl by placing this little girl's whole name on the Internet with a very sexually explicit message which would attract pedophiles and, of course, encouraging pedophiles to contact her. So, in our discussions with the attorney general and others, we feel the legislation as it's been drafted is constitutional.

Mr. GEKAS. I say that even if we were granted opinions or given opinions that it was not constitutional; could be deemed to be unconstitutional, that we should proceed. We believe strongly in your bill, and we want it passed. The only thing I'm concerned about is that the Department of Justice while in its views seems to approve the motivation for the bill, cautions us that because of the *Reno v. ACLU* case that it might be found to be unconstitutional. Well, most of us are saying, "Well, let that happen if that's going to happen, but in the meantime we believe it's constitutional; we want to proceed with the bill." So, I just wanted you to know that despite the caution on the part of the Department of Justice on that point, that we believe that we can overcome that.

Mr. WELLER. Of course, that's the challenge that we as legislators face, because as legislators, when we're trying to adapt the law to new technology, technology's always leapfrogging ahead and we're always playing catch up, and here's a case where an individual or a group of individuals are using the Internet to prey on children. They're using the latest technology to prey on children, and, clearly, that should be defined as a crime, and we should hold them accountable.

Mr. GEKAS. I thank the Chair. I have no further questions.

Mr. MCCOLLUM. Thank you. Mr. Buyer?

Mr. BUYER. I just have a couple of thoughts that are just jumping through my mind. In order to override the First Amendment, you've got the compelling State interest test, right? And then you

have the—I couldn't help but think of the horrors of a mother in trying to protect a child, especially within the home, so you have the expectations of privacy within your home. If the Government is permitted to regulate speech and say you can't scream fire in a crowded theater that we can regulate because it's time and specific, and so we make some balancing tests based on an overriding, compelling interest. If a parent cannot protect a child within their own home, I'm a little stunned here in what type of test the Supreme Court must be using. If, in fact—I was just speaking with counsel—if they're using the vagueness tests, I think we should be very creative in this statute. I think that what you've offered here is a great start, and I think we ought to be creative in what we send to the Supreme Court, if, in fact, whatever we do is going to be challenged in the Supreme Court. I look forward to working with you because I'll be very honest with you, I've got the computer in the house, and I've got the Internet at the office, and I've got the Internet at my campaign, but I will not permit the Internet in my own home. I've got a 15-year-old daughter and 13-year-old son, and I sit on this Crime Subcommittee, and we've had enough testimony about what's happening over the Internet. That's very sad, because there's a lot of great things out there on the Internet, but I've still got the *World Book Encyclopedia*, and the kids have to go to the *World Book*, and they have to learn how to look it up. Mr. Weller, I appreciate you for bringing your constituent here today. Ma'am, I appreciate your testimony.

Mr. WELLER. I look forward to working with you.

Mr. BUYER. I yield back.

Mr. MCCOLLUM. Thank you. I want to thank both of you for coming. We appreciate it, and certainly the legislation you've produced is going to be considered by our subcommittee in connection with the whole sex predator issue.

Mr. WELLER. Thank you, Mr. Chairman. We look forward to working with you.

Mr. MCCOLLUM. Thank you, Mrs. Boehle.

Ms. NIEMANN-BOEHLE. Thank you.

Mr. MCCOLLUM. At this time, I'm going to have to call up smaller groups of our colleagues. I know they're all here. We said we'd take you kind of on a first come, first served basis, but I don't know who came first, so we're going to take you on the list order that's here, and I'll be as fair as I know how. I think we'll take three at a time to begin with. We have three chairs up at the table, and the list I have would have Congresswoman Pryce, Mr. Franks, and Congresswoman Slaughter. If you would not mind being the first three, we'll get started on that basis, and we'll get to our other patient colleagues as soon as we can.

Yes, Louise, I think—

Ms. SLAUGHTER. I believe Mark was here first.

Mr. MCCOLLUM. Was he first? Well, if you want to yield to him, that's up to you. I couldn't tell who was here first. I don't have any magic wand. I walked in, perhaps, later than any of you did. I should have had somebody here checking you off, but we didn't.

Ms. SLAUGHTER. That's all right. I just—thank you very much.

Mr. MCCOLLUM. Mr. Franks, you want to—

Mr. FRANKS. Mr. Chairman, I'm going to let Mr. Lampson go, because he was here before I was.

Mr. MCCOLLUM. All right. Fair enough. Mr. Lampson, then, come on up; please do. Mr. Lampson, you may come up, then, if you'd like. We're not playing musical chairs here. I'm not trying to overdo anybody here.

At this point, Ms. Pryce, if you would proceed.

**STATEMENT OF HON. DEBORAH PRYCE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF OHIO**

Ms. PRYCE. Thank you, Mr. Chairman, and I appreciate you calling upon me, because I would like to get to the memorial service, and so I appreciate you expediting this, and I commend you for holding this hearing. This is very, very compelling. Any parent or relative of a teen-aged person, I think, feels this in their heart and knows that there's action that's needed. Protecting our children from predators is among the highest responsibilities we have as Members of Congress, and I'm pleased to appear before you and the rest of the subcommittee to urge your consideration of my bill, H.R. 3729, the Stop Trafficking of Pornography in Prisons Act, or the STOPP Act.

As a former prosecutor and a judge, I thought I had heard everything, however, I felt compelled to introduce the STOPP Act when I found out that a prisoner serving 23 years in a Minnesota State prison for sexually molesting young girls was convicted in trafficking and child pornography on the Internet from prison; that's correct, from prison. As it happened, the prisoner had unsupervised access to the Internet through a work and education program in the prison. Then, through his unsupervised access to the Internet the prisoner trafficked and child pornography over the Internet. Due to excellent law enforcement, the Federal authorities caught the prisoner with a computer disk containing 280 pictures of juveniles engaged in sexually explicit conduct. As a result, a Federal jury found the prisoner guilty of conspiring to trade in child pornography and possessing child pornography, and he was sentenced to 87 months in Federal prison which was to be served upon the completion of his 23 year State prison term.

Fortunately, this predator was caught, but who knows how many other such prisoners have unsupervised access to the Internet. To help prevent this from happening again and determine how prevalent such unsupervised access may be, I have introduced the STOPP Act which will, very briefly, prevent Federal prisoners from having unsupervised access to the Internet; express a sense of Congress strongly urging State officials to prohibit unsupervised access to the Internet for State prisoners, and to direct the U.S. Attorney General to survey States to determine to what extent each State allows unsupervised Internet access and report those findings to the Congress.

In sum, my bill will forever prohibit Federal prison officials from providing unsupervised Internet access to its prisoners. While I have been informed by Federal Bureau of Prison Officials that Federal prisoners currently have no Internet access, it's not inconceivable that such access could be provided somewhere, sometime in the future, particularly as the Internet becomes more and more

prevalent in our society. Therefore, my bill simply would nip this situation in the bud. Also, because there are no statistics regarding State prisons which currently allow access to the Internet, it's vitally important that we find out as soon as possible what is going on in our State prison system, so we can take appropriate steps to safeguard the situation. That's why the STOPP Act would direct the Attorney General to make these surveys.

In the meantime, the STOPP Act includes a sense of Congress urging the States to prohibit unsupervised access ensuring that the States are aware of what happened in Minnesota so that they can learn from that incident and take appropriate precautions. I hope you will agree that the STOPP Act is a necessary first step to stop prisoners from trafficking and child pornography. Mr. Chairman, once again, I thank you and the other members of the subcommittee for your time in entertaining this consideration, and I urge its consideration.

[The prepared statement of Ms. Pryce follows:]

PREPARED STATEMENT OF HON. DEBORAH PRYCE, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF OHIO

Chairman McCollum, I commend you for holding this hearing today. Protecting our children from predators is among the highest responsibilities we have as Members of Congress. I am pleased to appear before you, Ranking Member Schumer, and the rest of the Subcommittee members to urge your consideration of my bill, H.R. 3729, the "Stop Trafficking Of Pornography in Prisons Act"—the STOPP Act.

Mr. Chairman, as a former prosecutor and judge, I thought I had heard everything. However, I felt compelled to introduce the STOPP Act when I found out that a prisoner serving 23 years in a Minnesota state prison for sexually molesting young girls was convicted of trafficking in child pornography on the Internet—from prison! Yes, that is correct . . . *from prison!*

As it happened, the prisoner had unsupervised access to the Internet through a work and education program in prison. Then, through his unsupervised access to the Internet, the prisoner trafficked in child pornography over the Internet.

Due to excellent law enforcement, federal authorities caught the prisoner with a computer disk containing 280 pictures of juveniles engaged in sexually explicit conduct. As a result, a federal jury found the prisoner guilty of conspiring to trade in child pornography and possessing child pornography, and he was sentenced to 87 months in Federal prison, which will be served upon the completion of his 23-year State prison term.

Fortunately, this predator was caught, but who knows how many other such prisoners have unsupervised access to the Internet? To help prevent this from happening again, and determine how prevalent such unsupervised access may be, I have introduced the STOPP Act. My bill will:

- prevent federal prisoners from having unsupervised access to the Internet
- express the sense of Congress strongly urging state officials to prohibit unsupervised access to the Internet for state prisoners; and
- direct the U.S. Attorney General to survey the states to determine to what extent each state allows unsupervised Internet access and report these findings to Congress

In sum, my bill will forever prohibit federal prison officials from providing unsupervised Internet access to its prisoners. While I have been informed by federal Bureau of Prison officials that federal prisoners have no Internet access to date, it is not inconceivable that such access could be provided in the future, particularly as the Internet becomes more and more prevalent in our society. Therefore, my bill simply would "nip this in the bud".

Also, because there are no statistics regarding state prisons which allow access to the Internet, it is vitally important that we find out as soon as possible what is going on in the states so that we can take appropriate steps to safeguard such access if necessary. That is why the STOPP Act would direct the Attorney General to survey the states and report to Congress, as well. In the meantime, the STOPP Act includes a sense of Congress urging the states to prohibit unsupervised access

to the Internet and ensuring that the states are aware of what happened in Minnesota so that they can learn from that incident and take appropriate precautions.

I hope that you all will agree that the STOPP Act is a necessary first step to STOP prisoners from trafficking in child pornography on the Internet from prison. We owe it to our children to act now.

Again, Mr. Chairman, I thank you and the other members of the Subcommittee for their time and attention to the STOPP Act and other bills designed to protect our children from predators on the Internet.

Mr. MCCOLLUM. Ms. Pryce, we thank you. I've been so quick to recognize you as a colleague and knowing you want to rush out of here, as all three of you probably do, that I didn't do the formality I should do and that's to introduce you. You're Deborah Pryce. You're a Congresswoman from the 5th district of Ohio, and we're very pleased that you're here doing this.

I want to properly introduce Ms. Slaughter, who's next in line, too, for that reason. As we all know, Louise Slaughter is from the 28th district of New York. I could list all your committees. I'm not going to do that.

And Mr. Lampson, who's here today, represents the 9th district of Texas.

Each has a separate bill, and all of three of your statements, the entirety, will be entered into the record without objection. I would hope that you could stay long enough, Deborah, for us to ask a couple of questions. Ms. Slaughter, you may proceed.

STATEMENT OF HON. LOUISE SLAUGHTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Ms. SLAUGHTER. Thank you, Mr. Chairman. I was quite moved, as I know everybody in this room was, by the testimony of your first witness this morning. I can only imagine the horror of having to explain to a 9-year-old child what 9-year-old children should never hear, that some malicious adult is using them, but I want to praise your leadership and thank you very much for letting me be here this morning.

I want to talk about a very critical issue of serial rapists that you have in your bill, the Child Protection and Sexual Predator Punishment Act of 1998. The provisions that you included from my own measure, and I want to say again how much I've enjoyed working with you and your extraordinary staff, are an important step, I think, in addressing the national epidemic of serial rape. Sadly, it's an issue that won't go away. A survey of criminal activity throughout the country during the past few weeks reveals a familiar pattern: police arrest a rape suspect only to find he has a laundry list or prior conviction.

Last week in Oakland, a convicted felon was arrested for raping a 74-year-old woman in a pre-dawn attack. He's also accused of raping a 50-year-old woman twice, once on February 7 and again on March 26. This is just in the last few weeks. With prior convictions for everything from burglary to false imprisonment, this man was a walking time bomb.

A few years back, in my own district of Rochester, New York, a chronic felon named Edward Laraby attacked a 16-year-old girl walking down the street. The victim's family was horrified to learn that Mr. Laraby's previous convictions were numerous and included raping a 15-year-old at knife point while wearing a ski

mask in 1973; raping a 17-year-old at knife point in downtown Rochester Street in 1980, and attacking a woman with her child along the Erie Canal walking path in 1983.

Enough is enough, Mr. Chairman. Too many walking time bombs are on our streets, and our constituents deserve to be protected from society's worst offender, the repeat sexual predator. This is what we know about them: a small number of hardened felons make up this group. Their crimes are vicious and their sentences are short. The average rape sentence is just 10.5 years, and the average time served is only half of that; 5 years in jail. Frequently, habitual rapists attack victims in a number of different States, and courts often give inadequate consideration to convictions in other jurisdictions.

The Department of Justice statistics show that 60 percent of convicted sex offenders are on parole or probation. Moreover, the recidivism rates of sex offenders are astonishingly high. Released rapists are 10 ten times more likely to repeat their crime than any other criminal.

The Congress has responsibility to address the issue by passing a bill that would put an end to this cycle of violence repeated by a single perpetrator. The Protection from Sexual Predators Act is a measure that I wrote that would do just that. During the last Congress, the substance of this legislation passed the House overwhelmingly by a vote of 411 to 4.

The bill allows for Federal prosecution of rapes and serious sexual assaults committed by repeat offenders. It requires that repeat offenders convicted under this section automatically be sentenced to life in prison without parole. In other words, two strikes and you're in. I want local law enforcement officials to have the option of pursuing of Federal prosecution to ensure that these predators remain in jail since many States have far less severe punishment available under their own laws.

This measure has been endorsed by more than a dozen organizations including *the National Center for Missing and Exploited Children, the Jacob Wetterling Foundation, the Vanished Children's Alliance, the National Federation of Republican Women, LOCK, which stands for Lock Out Child Krime, the National Coalition Against Sexual Assault, the Klaas Foundation for Children, International Union of Police Associations, and the Jimmy Ryce Center for Victims of Predatory Abduction.*

During the past several years, I have worked closely with law enforcement officials, prison psychologists, and victims' rights groups to determine what can be done to protect our communities from these predators. There's strong agreement that serial rapists are a unique brand of criminal. In fact, many experts conclude that their sociopathic behavior can never be cured.

While your bill provides for life imprisonment with three rape convictions rather than two, I know that you have worked hard to craft a measure that will bring all sides to the table. The option of Federal prosecution provides a needed additional tool to safeguard communities that are victimized by these individuals, and I applaud your leadership.

Mr. Chairman, I know all of us know that anyone who's entering a dark elevator, a dark garage; entering their home when it's dark;

letting their child out to play on the street deserves to have the right of protection, not to be afraid, and I applaud, again, your leadership and hope we can see this enacted this year. Thank you very much.

[The prepared statement of Ms. Slaughter follows:]

PREPARED STATEMENT OF HON. LOUISE SLAUGHTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Thank you, Mr. Chairman. I want to praise your leadership in addressing the critical issue of serial rapists in your bill, the Child Protection and Sexual Predator Punishment Act of 1998. The provisions you included from my own measure, the Protection from Sexual Predators Act, are an important step in addressing the national epidemic of serial rape. I am delighted to be working with you.

Sadly, this is an issue that won't go away. A survey of criminal activity throughout the country during the past few weeks reveals a familiar pattern: police arrest a rape suspect only to find out he has a laundry list of prior convictions. Last week in Oakland, a convicted felon was arrested for raping a 74-year-old woman in a pre-dawn attack. He is also accused of raping a 50-year old woman twice—once on February 7 and again on March 26. With prior convictions for everything from burglary to false imprisonment, this man was a walking time-bomb.

In Pensacola this month, an Indiana man abducted a girl on her way to a ballet lesson. During the horrifying 600 mile journey back to Indiana that followed, the victim was repeatedly beaten, raped, and tied to a tree in a Clark County Forest. The rapist had a long criminal history in southern Indiana that included charges of attempted rape and battery.

A few years back, in my own district of Rochester, New York, a chronic felon named Edward Laraby attacked a 16-year-old girl walking along Monroe Avenue. The victim's family was horrified to learn that Mr. Laraby's previous convictions were numerous, and included raping a 15-year-old at knife point while wearing a ski mask in 1973, raping a 17-year-old at knife point near Monroe and Alexander street in 1980, and attacking a woman with her child along the Erie Canal walking path in 1983.

Enough is enough, Mr. Chairman. Too many walking time bombs are on our streets. Constituents deserve to be protected from society's worst offender—the repeat sexual predator.

Here's what we know about them:

- A small number of hardened felons make up this group;
- Their crimes are vicious and their sentences short. The average rape sentence is just 10.5 years, and the average time served is only half of that—five years in jail.
- Frequently, habitual rapists attack victims in a number of different states, and courts often give inadequate consideration to convictions in other jurisdictions;
- Department of Justice statistics show that 60 percent of convicted sex offenders are on parole or probation. Moreover, the recidivism rates of sex offenders are astonishingly high—released rapists are 10 times more likely to repeat their crime than other criminals.

The Congress has a responsibility to address the issue by passing a bill that would put an end to this cycle of violence repeated by a single perpetrator. The Protection from Sexual Predators Act is a measure I wrote that would do just that. During the last Congress, the substance of this legislation passed the House of Representatives overwhelmingly by a vote of 411-4.

My bill allows for the federal prosecution of rapes and serious sexual assaults committed by repeat offenders. It requires that repeat offenders, convicted under this section, automatically be sentenced to life in prison without parole. In other words, two strikes, and you're in. I authored this measure to give local law enforcement officials the option of pursuing federal prosecution to ensure that these predators remain in jail, since many states have far less severe punishment available under their laws.

This measure was endorsed by more than a dozen organizations, including the National Center for Missing & Exploited Children, the Jacob Wetterling Foundation, the Vanished Children's Alliance, the National Federation of Republican Women, LOCK (Lock Out Child Crime), the National Coalition Against Sexual Assault, the

Klaas Foundation for Children, the International Union of Police Associations, and the Jimmy Ryce Center for Victims of Predatory Abduction.

During the last several years, I have worked closely with law enforcement officials, prison psychologists, and victim's rights groups to determine what can be done to protect our communities from these sexual predators. There is strong agreement that serial rapists are a unique brand of criminal. In fact, many experts conclude that their sociopathic behavior can never be cured.

While your bill provides for life imprisonment after three rape convictions rather than two, I know you have worked hard to craft a measure that will bring all sides to the table. The option of federal prosecution provides a needed additional tool to safeguard communities that are victimized by these individuals, and again, I applaud your leadership.

We both share a conviction that no man, woman or child should have to live in fear of a serial rapist or a habitual child molester. Honest citizens should be able walk safely into their garages at night, enter freely into their own homes, and feel confident when they enter an elevator that they will not become a victim to the most brutal of sexual predators.

I look forward to working with you as this legislation moves through the House.

Mr. MCCOLLUM. Thank you.

Mr. Lampson.

STATEMENT OF HON. NICK LAMPSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. LAMPSON. Thank you, Mr. Chairman and members of the subcommittee. As chairman of the Congressional Missing and Exploited Children's Caucus, I particularly appreciate the opportunity to testify on what has become an issue that I unfortunately know too much about: the exploitation of children. And, Mr. Chairman, I'm also honored to be the first Democrat to sign on to your legislation, the Child Protection and Sexual Predator Punishment Act of 1998. I also wanted to thank Senior Special Agent, Glenn Nick, of the U.S. Custom Service for attending this hearing today; he's right here behind me.

Child pornography was a world wide industry that was all but eradicated in the 1980's. We did a good job with passing good laws. Unfortunately, it's resurfaced again with a vengeance thanks to computer technology, and although the smutty magazines and photographs ordered from the back pages of adult magazines are still prevalent, this illegal activity has flourished on the Internet with child pornography being traded freely in chat rooms, news groups, and private email. Pedophiles, child molesters, and other purveyors of child pornography now have instant access to explicit photographs in the privacy of their own homes and offices. Hidden behind their PCs they brazenly trade pictures and videos using technology to transmit an unprecedented number of images around the world broadening the audience for child pornography and victimizing a new generation of children. And they taunt law enforcement that does not have the manpower or the resources to hunt them down.

I represent part of Houston. During 1 week in March of this year, the Houston Chronicle reported that U.S. Customs Agents who are charged with investigating Internet crimes against children seized computers from a home and a church saying the equipment was used to send and receive child pornography through the Internet. Well, apparently, this was not the only seizure of child porn that week. A man was accused of possessing and distributing pornographic images of children on the Internet. A subsequent

search of his home revealed thousands of pornographic images on his computers including at least 150 illegal pornographic images of children as young as 6 years old.

I'll be introducing legislation within the next few days that will authorize funds for the U.S. Customs Service Child Pornography Enforcement Program, the International Child Pornography Investigation and Coordination Center, ICPICC. To help combat the problem of child pornography through computer technology, the U.S. Customs Services established the International Child Pornography Investigation and Coordination Center in April 1996. Staffed by special agents with expertise in both child pornography cases and computers, the primary objectives of the ICPICC are to more effectively assist the field in the investigation of the increasing number of child pornography cases; provide guidance and support to the field in investigation of complex cases involving child pornography violations, and spearhead the U.S. Customs Service international effort to combat child pornography. There's a need to adequately direct Federal resources toward attacking the problem of child exploitation over the Internet. The U.S. Customs Service has long been recognized by law enforcement and the international community for its knowledge and skill in investigating cases of child pornography and child exploitation.

The establishment of this center has enhanced the ability of the Customs Service to maintain its aggressive posture in this investigative arena. Since 1995, the center's investigations have resulted in 329 arrests. Properly funding the center will allow the Customs Service to continue its worldwide leadership in the prevention of sexual exploitation and abuse of children in the U.S. and abroad.

My concern with the lack of funding provided for the U.S. Customs Service Child Pornography Enforcement Program is obvious. Ever mindful of the widespread benefits that the Custom Service provides, I am greatly discouraged that the Fiscal Year 1999 budget request does not provide adequate funding for this program. I've led a number of my colleagues in writing to Chairman Kolbe and Ranking Member Hoyer, both Members of the Congressional Missing and Exploited Children's Caucus—I might add—to request proper funding, and I urge my colleagues to take this issue seriously and fund the \$2 million necessary to protect our children from victimization. Mr. Chairman, I'm sure you'll agree this is a small price to pay to reduce the exploitation of our children.

[The prepared statement of Mr. Lampson follows:]

PREPARED STATEMENT OF HON. NICK LAMPSON, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF TEXAS

Mr. Chairman. Members of the Subcommittee. As Chairman of the Congressional Missing and Exploited Children's Caucus, I appreciate the opportunity to testify on what has become an issue that I unfortunately know too much about—the exploitation of children.

Child pornography was a worldwide industry that was all but eradicated in the 1980s. Unfortunately, it has resurfaced with a vengeance, thanks to computer technology. Although the smutty magazines and photographs ordered from back page ads in adult magazines are still prevalent, this illegal activity has flourished on the Internet—with child pornography being traded freely in chat rooms, news groups and private email. Pedophiles, child molesters and other purveyors of child pornography now have instant access to explicit photographs in the privacy of their own homes and offices. Hidden behind their PCs, they brazenly trade pictures and videos, using technology to transmit an unprecedented number of images around the

world, broadening the audience for child pornography and victimizing a new generation of children. And they taunt law enforcement that does not have the manpower or resources to hunt them down.

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Allow me to tell you a true and chilling story. In February, a South Houston teenager ran away from home to Baytown to see someone she had never met. That night, the 22 year-old man sexually assaulted her. Why did she leave home to meet a stranger? They met each other on the Internet.

I will be introducing legislation in the next few days that will authorize funds for U.S. Customs Service Child Pornography Enforcement program - the International Child Pornography Investigation and Coordination Center (ICPICC).

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- more effectively assist the field in the investigation of the increasing number of child pornography cases;
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There is a need to adequately direct federal resources toward attacking the problem of child exploitation over the Internet. The U.S. Customs Service has long been recognized by law enforcement and the international community for its knowledge and skill in investigating cases of child pornography and child exploitation. The establishment of the ICPICC has enhanced the ability of the Customs Service to maintain its aggressive posture in this investigative arena. Since FY 1995, ICPICC's investigations have resulted in 329 arrests.

Properly funding the ICPICC will allow the Customs Service to continue its worldwide leadership in the prevention of the sexual exploitation and abuse of children in the United States and abroad.

My concern with the lack of funding provided for the U.S. Customs Service Child Pornography Enforcement program is obvious. Ever mindful of the widespread benefits which the Customs Service provides, I am greatly discouraged that the FY 1999 budget request does not provide adequate funding for this program.

I have led a number of my colleagues in writing to Chairman Kolbe and Ranking Member Hoyer (both members of the Congressional Missing and Exploited Children's Caucus) to request proper funding.

I urge my colleagues to take this issue seriously and fund the \$2 million necessary to help protect our children from victimization. Mr. Chairman, I am sure you'll agree that this is a small price to pay to reduce the exploitation of our children.

Mr. MCCOLLUM. Thank you very much, Mr. Lampson.

Ms. PRYCE, civil libertarians have raised concerns that your bill, H.R. 3729, may violate the First Amendment's free speech rights of prisoners by not allowing them to have access to the Internet. Do you think it does, and if you don't think it does—obviously, I suspect you don't since you introduced the bill—why not?

Ms. PRYCE. Well, thank you for the opportunity to address that, Mr. Chairman. Under our research, under *Turner v. Safely*, the seminole case in this issue, I think we meet that standard very adequately, and I would be happy to go into the arguments there, but, sufficed to say, I am convinced from my constitutional training that we're fine on that issue.

Mr. MCCOLLUM. Mr. Buyer, do you have question of Ms. Pryce? You want to run to this service, and I don't want to keep you unnecessarily, so Mr. Buyer?

Mr. BUYER. That's fine. You stated that like a judge. [Laughter.]

I don't have any questions for Ms. Pryce if she wanted to go. I do have a couple of comments on the other—

Mr. MCCOLLUM. Well, I will come back. I think Ms. Pryce is the one who wants to run off to the service. Mr. Chabot, do you want to ask Ms. Pryce any questions?

Mr. CHABOT. I'd just to thank Ms. Pryce for her leadership on this issue. It's a very important issue, and she's doing a great job, as are the other Members that are here this morning.

Ms. PRYCE. I thank the committee very, very much.

Mr. MCCOLLUM. Well, thank you, Ms. Pryce. Thank you very much. Sorry to keep you.

Ms. Slaughter, the Justice Department's raised concerns about federalizing the crimes of rape which is primarily, of course, prosecuted at the State level. We've tried to incorporate a good deal of what you've written into the bill, and we very greatly appreciate your contribution of this, but there have been some areas of it where we didn't go out of that concern. Are you concerned about the possible expansion of Federal jurisdiction? How far should we go and so forth?

Ms. SLAUGHTER. Mr. Chairman, when we first started working on this bill, I had a good deal of discussions with people about this type of crime and whether it was really correct for us to sentence them as the way we might have sentenced someone else for a crime or should we really consider this special and separate. I've talked with prison psychologists, as I've pointed out, that said that they don't believe that these people can ever be cured, and it struck me that since serial rapists move across State lines often, that it was more of a Federal issue, and part of the legislation that we wrote was enacted into law a few years ago for Federal registry, and I know that the time that Polly Klaas was taken from her family, had that registry been in effect—and as you recall, two policemen stopped the car that had Polly Klaas in the trunk, and had they been able to understand his past record, which was available, accept they didn't have it in California, they might have reexamined that car and found her and she could have been kept alive. And spurred on by that, despite the fact that I understand that federalization of a crime is not what the Federal Government wants to do, and I have some sympathy with that. It seems to me that this is an entirely different category of crime. These are people who are recidivists who literally prey on others. We see no way in the world that incarcerating them cures them. Part of the legislation that we have had before was that we wanted a good study of what creates a serial rapists. Perhaps, we can try to prevent it in early childhood, but at this point, my aim is to make sure that little children can go out and ride their bicycle which kids in upstate New York recently have had a hard time doing because they disappear, and that heartbreak shouldn't be allowed. We should not just turn our back on the fact that when these people come back out we know they are going to do it again.

Consequently, it seems to me the only thing we can do is to keep them in prison for life.

Mr. MCCOLLUM. Well, I certainly concur that the serial rapist situation does have Federal expertise especially when they cross State lines looking for them and so forth, and I just was curious as to how you viewed that.

Mr. Lampson, with regard to Customs right now, do you know what they receive in the way of any monies, appropriations or otherwise, to fight child pornography?

Mr. LAMPSON. They're not receiving any direct funding. There's \$110,000 that comes out of the general operating fund of their operation, the investigations operation, but, certainly, that's not adequate to perform the services that they'd really like to be involved with. We believe that the \$2 million that would go directly to the center would fund adequately a number of agents that would dramatically drive up the number of arrests that would occur each year.

Mr. MCCOLLUM. Well, we certainly want to look at what you're working on and appreciate your coming here today.

Mr. Buyer, do you have questions of these two panelists?

Mr. BUYER. Yes, I appreciate your leadership on this. My question is, if it's so prevalent then why aren't there more prosecutions?

Mr. LAMPSON. First of all, the prosecutions that are being made are almost 100 percent successful. The sheer numbers of people who are out there performing these dastardly acts over the Internet, cannot possibly compete with the amount of work that the Customs Agents have to do. It's interesting to note that we've had continued increases in the number of arrests each year, particularly since the creation of the center, and even though there are only a few people who are involved with operating the center and working with the agents who have many other assignments, we believe that if it's properly funded, that we could drive the total number of arrests up dramatically. Apparently that's what it's going to take. It's going to take some kind of an effort to get the word out that these people are not going to be able to get away with what they're doing; that they're not going to be able to continue to trade their pornographic materials internationally or even within our country.

Mr. BUYER. Last point I have to say, Ms. Slaughter, you're touching on one of the most difficult areas, I think, that we have to struggle with in the criminal area. That is whether it's the pedophile or the recidivism of a serial rapist or killer all the way down to a exhibitionist, they think that their behavior is normal. I'm not interested in growing the Federalism here. You give the example of the one case where a girl's abducted across State line on a 600-mile journey. I mean, you do have the prosecution on kidnapping, and there are a whole bunch of other charges that can happen, and at the same time, that individual can be tried in those State cases, and then they can all be served on concurrent sentences instead of consecutive sentences, so you can really begin stacking on that particular individual. I just want to let you know that my heart's with you, but I don't really want to be interested in growing federalism.

Ms. SLAUGHTER. I appreciate what you're saying, and I think that at first blush that that's where we all come down, but then the answer is even though it may appear normal to the person who commits the offense, there is a victim there, and it is the victim that I wish to protect. I am sorry if the abnormality—maybe if we want to classify this is an illness and hospitalize them for the rest—I want them off the street. It is appalling to me that time after time when a rapist is caught we discover—now, there was a time when past records often weren't always known if they were in another State, and, as I point out, I think that judges have not often taken that into consideration, but I simply want to make certain that people are safe from a person that we know having committed that crime once, and we say the first offense is different; we don't just immediately lock them up, but showing a propensity to repeat that, society needs to be protected.

Mr. BUYER. Well, you have to understand, we are all struggling with this one. I prosecuted these types of individuals before, and it is very frustrating, so you go with the maximum you can with regard to the offense that was committed and then we're in to these issues on notification, so the communities know when these individuals are released and they come into the communities, so we're trying to juggle with this particular individual who commits these crimes and he thinks what he's doing is okay. It's bizarre.

Ms. SLAUGHTER. Well, I remember when I was working criminal justice in New York legislature and they always said to me that a child molester is an ideal prisoner because there are no children to molest. Frankly, I would much prefer—I appreciate that it's a difficult judgment to weigh, but if I had to err on the side of keeping one in prison and saving one or two children from the horror of being raped or attacked, kidnapped or killed, and the family suffering forever, I would make the choice of keeping him locked up.

Mr. BUYER. Thank you, ma'am. I yield back.

Mr. MCCOLLUM. Mr. Chabot?

Mr. CHABOT. I'll be real brief. I agree with the comments you made wholeheartedly and really appreciate all of the Members that are here for their leadership. We need to protect our children from—I know it's not a politically correct term here in Washington—but the scumbags of the world, and they're out there, and, so I want to thank all of you for doing what you can to protect the kids of this country against these people. Thank you.

Mr. MCCOLLUM. Thank you, Mr. Chabot. Thank both of you, Ms. Slaughter, and you, Mr. Lampson, for your contribution.

Ms. SLAUGHTER. Thank you.

Mr. LAMPSON. Thank you. Saving the life of a child makes all the effort worthwhile.

Mr. MCCOLLUM. Thank you, sure. I think we'll try to put all four of the remaining Members on up here, if we can add a chair, if one of you would be so willing to do that, Mr. Riley and Mr. Foley, Mr. Franks, and Mr. Gutknecht. I know we were planning this two-by-twos, but it's uncomfortable to sit out there. I've been in that position waiting your turn, so let's see if we can add a fourth chair up there. Can we squeeze one in there? Maybe, Mr. Franks or Mr. Riley will scoot down that way to the left a little bit. Mr. Gutknecht needs to have a place to sit there.

I'll introduce each of you. Congressman Bob Riley represents the 3rd district of Alabama. He's on the Banking and Financial Services and National Security's Committees, and I could introduce you a whole lot more but he's about his bill, H.R. 3185, Abolishing Child Pornography Act.

Congressman Mark Foley represents the 16th district of Florida. He serves on the Agriculture, Banking and Financial Services, and the Sciences Committee, and he's here to support his bill, H.R. 2488, the Volunteers for Children Act.

Congressman Franks, Bob Franks, represents the 7th district in New Jersey. He's on the Budget and Transportation Infrastructure Committees and the Subcommittees—I'm not going to read all those. Mr. Franks will be speaking on three bills, H.R. 1972, the Children's Privacy Protection and Parental Empowerment Act, H.R. 2122, Jones Law Act, and H.R. 2173, the Child Abuse Notification Act.

Congressman Gil Gutknecht represents the 1st district of Minnesota. He's on the Budget and Science Committees, and Mr. Gutknecht will be speaking in support of H. Con. Res. 125, a concurrent resolution expressing the sense of the Congress that each State should enact legislation regarding notification procedures necessary when a sexually violent offender is released.

I understand, Mr. Riley, you have a markup we're keeping you from. Unless somebody else has a burning hole in their pocket, I'm going to go to you first then. Please proceed. All of the testimony, written testimony, of the Members who are here today will be introduced in the record in their entirety, without objection. So ordered, and you may give us a summary of whatever you wish. Mr. Riley.

STATEMENT OF HON. BOB RILEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. RILEY. Thank you, Mr. Chairman. Mr. Chairman, I'd like to thank you and the members of the subcommittee for inviting me here to testify on behalf of my bill, H.R. 3185, the Riley-Bachus Abolishing Child Pornography Act. Furthermore, I'd like to commend you both for holding this hearing and your efforts to pass legislation designed to protect the most vulnerable members of our society, our children.

This past February, along with Representative Spencer Bachus, I introduced the Abolishing Child Pornography Act. This measure will amend Title 18, section 2252 (a) (4a) and (b); section 2252 (a) (5a) and (b) of the United States Code. These statutes currently prohibit the possession of three or more items containing sexually explicit material depicting children. Mr. Chairman, I believe that the three or more provisions contained in current law creates a loophole that must be closed immediately. That's the purpose of my legislation. If enacted, we will finally have a zero tolerance policy when it comes to child pornography. My bill is supported by the National Center for Missing and Exploited Children, the Justice Department, the National Law Center for Families and Children, and numerous pro-family groups. I intend to offer H.R. 3185 as an amendment to your bill, H.R. 3494 when it comes before the Full House of Representatives early next month.

I'm here today to ask for your support for this proposed amendment. Let me take a moment to explain why it's so important to our children that we enact the Abolishing Child Pornography Act as soon as possible. Several years ago, Senator William Roth, in testimony before the Senate Committee on the Judiciary, estimated that over 0.5 million children each year were victims of sexual abuse. Of those cases, according to estimates for the Los Angeles Police Department, over 60 percent involved child pornography in some way. Mr. Chairman, that was in 1987, over 10 years ago. Today, because of the widespread use of computers and the advent of the Internet the production and distribution of child pornography is much easier, and the problem has gotten worse not better.

Just last December, the Justice Department estimated that filings against those engaged in child pornography have increased 162 percent since 1992, and according to the Sarasota Herald Tribune, there are currently 150,000 known pornographic images of children circulating in cyberspace. These disturbing figures are clear indications that child pornography is becoming a threat to every child in America. This is especially true when one considers that the most important thing in a pedophile's life is his collection of pornography. The three or more loophole in the current law is giving these people the ability to possess not two, as one might think, but hundreds of photos of children in sexually explicit situations. Mr. Chairman, that's wrong.

Child pornography is simply a tool used in a vicious cycle designed to manipulate, exploit, and blackmail the most vulnerable members of our society. Its effects are devastating both for the children exploited in the actual pictures and for those who view it. Without a doubt, child pornography places its victims in extremely harmful situations. Children as young as 2 years old may be subjected to sexually transmitted disease, rape, assault, and torture. Many feel a sense of shame or guilt about their participation in the production of pornography. Others may feel that their family or friends will find out making it difficult for them to testify in court against their molesters.

Mr. Chairman, given the awful and sometimes deadly effects that child pornography is known to have on its victims, I don't believe that anyone can justify its production, distribution, or its possession. Again, let me emphasize under today's laws, a person can only be prosecuted if they possess three or more books, magazines, periodicals, films, videotapes, or other matter which contain a visual depiction of a minor engaged in sexually explicit conduct. That means, Mr. Chairman, that a pedophile can legally possess a book or magazine with literally hundreds of pictures of children being sexually abused. Worse yet, they can legally possess two videotapes that are several hours long featuring children being raped or exploited. Simply put, child pornography is nothing more than a frozen record of the sexual victimization of a child. Allowing it to happen to one child is one child too many. That's why we must pass the Abolishing Child Pornography Act as quickly as possible.

Again, Mr. Chairman, I urge you and the members of this subcommittee to support my amendment to the Child Protection and Sexual Predator Punishment Act of 1998. It's the right thing to do for all of our children. Thank you.

[The prepared statement of Mr. Riley follows:]

PREPARED STATEMENT OF HON. BOB RILEY, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF ALABAMA

Mr. Chairman, I would like to thank you and the members of the subcommittee for inviting me here today to testify on behalf of my bill, *H.R. 3185, The Riley-Bachus Abolishing Child Pornography Act*. Furthermore, I like to commend you for holding this hearing and for your efforts to pass legislation designed to protect the most vulnerable members of our society, our children.

This past February, I, along with Representative Spencer Bachus, introduced *The Abolishing Child Pornography Act*. This measure will amend Title 18 (Section 2252(a) (4)(A) and (B) and Section 2252A (5)(A) and (B)) of the United States Code. These statutes currently prohibit the possession of "three or more" items containing sexually explicit material depicting children.

Mr. Chairman, I believe that the "three or more" provision contained in the current law creates a loophole that must be closed immediately. That is the purpose of my legislation. If enacted, we will finally have a "zero-tolerance" policy when it comes to child pornography.

My bill is supported by the National Center For Missing and Exploited Children, the Justice Department, the National Law Center for Families and Children, and numerous pro-family groups.

I intend to offer H.R. 3185 as an amendment to your bill, H.R. 3494, *The Child Protection and Sexual Predator Punishment Act of 1998*, when it comes before the full House of Representatives early next month. I am here today to ask for your support for this proposed amendment.

Let me take a moment to explain why it is so important to our children that we enact *The Abolishing Child Pornography Act* as soon as possible.

Several years ago, Senator William Roth, in testimony before the Senate Committee on the Judiciary, estimated that over a half-million children each year were victims of sexual abuse. Of those cases, according to estimates by the Los Angeles Police Department, over 60 percent involved child pornography in some way.

Mr. Chairman, that was in 1987—over ten years ago. Today, because of the widespread use of computers and the advent of the Internet—making the production and distribution of child pornography much easier—the problem has gotten worse, not better.

Just last December, the Justice Department estimated that filings against those engaged in child pornography have increased by 162 percent since 1992. And according to *The Sarasota Herald-Tribune*, there are currently 150,000 known pornographic images of children circulating in cyberspace.

These disturbing figures are clear indications that child pornography is becoming a threat to every child in America. This is especially true when one considers that the most important thing in a pedophile's life is his collection of pornography. The "three or more" loophole in the current law is giving these people the ability to possess not two, as one might think, but hundreds of photos of children in sexually explicit situations.

Mr. Chairman, that is wrong.

Child pornography is simply a tool used in a vicious cycle designed to manipulate, exploit, and blackmail the most vulnerable citizens of our society. Its effects are devastating, both for children exploited in actual pictures and for those who view it.

Without a doubt, child pornography places its victims in extremely harmful situations. Children as young as two years-old may be subjected to sexually transmitted diseases, rape, assault, and even torture.

Many may feel a sense of shame or guilt about their participation in the production of pornography. Others may fear that their family and friends will find out, making it difficult for them to testify in court against their molesters.

Mr. Chairman, given the awful, and sometimes deadly, effects that child pornography is known to have on its victims, I do not believe that *anybody* can justify its production, distribution, or possession.

Again, let me emphasize, under today's laws, a person can only be prosecuted if they possess "three or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction . . . of a minor engaging in sexually explicit conduct." That means, Mr. Chairman, that a pedophile can legally possess a book or magazine with literally hundreds of pictures of children being sexually abused. Worse yet, they may legally possess two video tapes that are several hours long featuring children being raped and exploited.

Simply put, child pornography is nothing more than a frozen record of the sexual victimization of a child. Allowing it to happen to one child is one child too many.

That is why we must pass *The Abolishing Child Pornography Act* as quickly as possible.

Again, Mr. Chairman, I urge you and the members of the subcommittee to support my amendment to *The Child Protection and Sexual Predator Punishment Act* of 1998. It is the right thing to do for our children.

Mr. MCCOLLUM. Mr. Riley, normally we go down the line, but do you need us to question you first, so you can go to this markup?

Mr. RILEY. If you choose.

Mr. MCCOLLUM. If I could—if the other members would indulge—I simply am concerned about questions that were raised, I think, historically, when we did the child pornography possession laws that are now on the books with regard to whether or not somebody by possessing merely one photograph could be more easily convicted of something they didn't intend to violate or have.

For example, I think it has been brought to our attention that in many of the so-called men's magazines it is not unusual in investigator's inquiries or whatever where prosecutions generally come from to find in that field a child, somebody under 18, being posed in those magazines. Now, somebody who maybe buys that publication doesn't know that's a child in there, obviously, intent is part of the criminal law, so they wouldn't be technically having committed a crime for possession, I presume, of that, but none the less that's the kind of argument against your legislation that we hear.

What do you say that somebody could innocently be prosecuted it would be a big defense whereas if they had three or four or more of these items that would be less likely? I don't know the answer to that, but I want to have your response to it, not mine.

Mr. RILEY. Mr. Chairman, you bring up a valid point. Most child predators, today, don't have the ability to go to a playground and take a PC with them to download pornography off of the Internet, but they do have the ability to take photographs to a playground to show children to make them think that it's normal to be engaged in some of these acts, and that's what we're trying to prevent here. We're trying to say that there should be absolutely no child pornography available anywhere where a person can easily distribute, or use it to coerce a child. As long as there is any exception; and we don't have zero tolerance, then what we're doing, in effect, is encouraging the production and distribution of this. If we can get to the point—the Supreme Court has ruled time and time again, child pornography is not protected. So, if we know that it is a crime to possess it, how do we get to the point today that we say some is acceptable?

And, again, what makes it even more complicated today is the definition of one or more. If you own one book that contains 100 or 150 vial photographs, that's perfectly legal, but if you own three individual photographs that's illegal. The ability for a prosecutor today to make the determination of what is three or more is another one of the reasons that I think we need to enact this legislation. As long as we have a zero tolerance, the prosecution should have no trouble in making the determination about whether it's a legal substance.

Mr. MCCOLLUM. Thank you very much. Ms. Jackson Lee or Mr. Chabot, do you wish to question Mr. Riley? We're going to get to the rest of the panel, but he has to go to a markup.

Ms. JACKSON LEE. I would, Mr. Chairman. Thank you very much and to the other panelists. Some of your testimony I have not had a chance to hear. Let me express my deep concern for these issues, and, Mr. Riley, one of the problems that those of us who abhor the acts against children, the violent acts and the pornography that our children have been exposed to is, of course, running afoul of issues like the 1st Amendment that have been raised. I would like you just to give me an example of who would be running afoul of your law? Would this be a circumstance where we would expect law enforcement to go inside people's private apartments with no provocation or how do you see this law being implemented?

Mr. RILEY. Congresswoman, the only thing that we're trying to do here is make it clear that you can't possess any child pornography—we're not advocating going into people's homes; we're not advocating illegal search and seizure—the only thing we're saying is that if and when you are caught with a piece of sexually explicit child pornography, that you will be subject to the laws. Whether it's 1 book or 100 pieces of pornography, what we're saying is that we shouldn't have to debate whether or not there is a limit to the amount you should own. We're saying that it should be illegal to own any. We're not trying to redefine what child pornography is. We're not trying to encourage its adherence. The only thing that we are trying to do is make it easier for that prosecutor to say if you own any then it is a crime, and you will be punished.

Ms. JACKSON LEE. And the question of whether or not it is or is not pornography still remains, and that would have to be proven, and all of those protections would be in place.

Mr. RILEY. That does not change at all. We're not trying to redefine pornography. We're only trying to redefine the amount of child pornography that you can legally own. Today, you can legally own individual pieces, two individual pieces. We're saying that you should have zero tolerance; that you should not be allowed to own any child pornography. It's patently illegal and should be.

Ms. JACKSON LEE. Thank you, Mr. Chairman. Thank you, Mr. Riley.

Mr. MCCOLLUM. Mr. Chabot, do you have any questions.

Mr. CHABOT. No.

Mr. MCCOLLUM. Thank you, Mr. Riley. You may be excused and go about your markup in your other committee, but thank you very much.

I'm going to go down the list and let each of you testify, and then we'll question if that's all right, if nobody has to run out of here. Mr. Foley, you may proceed.

STATEMENT OF HON. MARK FOLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. FOLEY. Thank you very much, Mr. Chairman, and particularly for your leadership on H.R. 3494. I am a co-sponsor of all the measures that are being discussed here today, and I think it shows and demonstrates the growing concern Members of Congress have regarding these various and sundry problems that we face in America. I want to thank the members of the subcommittee, as well, and deeply appreciate the opportunity to testify today on the Volunteers for Children Act, H.R. 2488. You have all played a significant role

in ensuring strong laws to protect children, and I would hope that those efforts will extend to supporting this piece of legislation as well.

The Volunteers for Children Act is a very simple proposal. In 1993, this subcommittee helped enact into law the National Child Protection Act, the so-called Oprah Winfrey Act. The law gave organizations such as schools, day care facilities, and youth-serving volunteer organizations access to FBI fingerprint background checks to help ensure that they weren't inadvertently hiring convicted child molesters to tend to their young charges. In doing this, the law recognized—as virtually every law enforcement official in the country does—that fingerprint background-based checks are the only way of conclusively identifying someone who has a criminal conviction. Name checks can be fooled by changing a name or a birth date or a Social Security number, but a fingerprint check cannot be fooled.

The only hitch to the National Child Protection Act was this: under the law, a school or day care or volunteer organization can have access to the FBI fingerprint database only if the State in which they are located has enacted a State law approved by the U.S. Attorney General that allows that access. The good news is that, thanks to this law, most States have responded by requiring either voluntary or mandatory fingerprint background checks for school teachers, school bus drivers and others, like licensed day care providers, who are in direct contact with children. The bad news is that non-profit volunteer organizations have been completely left out. Only about six States have any significant provisions allowing volunteer organizations access to fingerprint-based checks. So, all a convicted sexual perpetrator has to do to get easy access to children is to look respectable, be nice, and offer to help in scouting or camping or coaching activities which aren't located in those handful of States.

The Volunteers for Children Act is no panacea. It cannot help catch first-time offenders or child molesters who have never been caught or reported. But it can help volunteer organizations screen out convicted predators—the hard-core ones who are out of jail and bent on preying on children again.

As a January, 1997 report by the General Accounting Office put it, “national fingerprint-based background checks may be the only effective way to readily identify the potentially worst abusers of children; that is, the pedophiles who change their names and move from State to State to continue their sexually perverse patterns of behavior.”

In some States, including my own State of Florida, efforts were made to enact laws mandating fingerprint checks for volunteers to protect children from exactly this type of predator. But States, understandably, have been reluctant to impose mandates.

Some organizations themselves have also worried about the expense and the time it takes to get results from a fingerprint check, but both these concerns will soon be history. The FBI expects that its new computerized fingerprint system—the integrated Automated Fingerprint Identification System—will be up and running by the middle of next year. Because this system no longer requires transporting and processing paper fingerprint cards, which will

eliminate much of the labor now required, the FBI expects the turnaround time and the cost for checks to drop significantly. It estimates turnaround will drop from 7 weeks or so to only about 24 hours. And costs, though still uncertain now, are expected to drop significantly from the current Federal/State combined averages of \$36 per request.

Mr. Chairman, as everyone here fully knows, hiring a sexual predator is every volunteer organization's worst nightmare. For years, many of them, most prominently the Boys and Girls Clubs of America, have begged us for access to the only tool that will prevent this nightmare from happening, at least where known convicted child predators are concerned.

I urge this committee to support those pleas now by supporting the Volunteers for Children Act. It does not usurp State law. It merely allows volunteer organizations access to the FBI data, if they want that access, in the absence of State law.

Before closing, I would like to respond briefly to remarks made by the U.S. Department of Justice about the Volunteers for Children Act. They note that the concept of this legislation is laudable, but worry it provides no incentive to States to implement background check systems. My only answer to that is that States have had 5 years to do so, but either have not tried or have had their efforts rejected by the Justice Department itself. In the meantime, organizations serving youth are left stranded by the failure of legislatures and bureaucrats. And in the meantime, children are being molested—like the 12-, 13-, and 14-year-old boys who were being molested in South Buffalo, New York, by a 29-year-old they came to know as their church youth leader and scout assistant; or the 7-year-old girl in Fort Lauderdale, Florida, who was sexually assaulted by a 22-year-old church volunteer. Only after this guy was caught did the church learn he had a prior conviction for child molestation.

The Justice Department also worries that the Volunteers for Children Act will minimize the benefits of local record background checks which the Department of Justice say, quote, "are often more timely and germane to the individual's activity in the community." In all do respect to the Justice Department, this argument doesn't wash. Besides undercutting the entire reason for enacting the original law in 1993, which President Clinton himself signed into law, this argument overlooks the obvious: volunteer groups aren't going to go through the time and expense of an FBI background check if they can get what they want from a free or cheaper local check. But more importantly, the would-be volunteers that they are worried about aren't people from their own communities. They are transplants—people who come to town from elsewhere, from other States and towns, people they don't know much about nor do the local law enforcement agencies know anything about them.

The Justice Department is also worried that in the absence of State laws allowing access, agencies will be in a quandary over privacy rights v. public safety concerns. These are real concerns but not because of this bill. This bill is not intended to change the way requests for an FBI fingerprint check are handled, and every State has a set procedure for dealing with this whether the check is requested for school teachers or bankers. Volunteer organizations

would have to follow those procedures as well as those already laid out in the 1993 law the bill amends. If that isn't clear in this bill, we can make it so.

Finally, the Justice Department states that it would oppose "Any further bypass of these systems that would result in the background checks based on applicants name rather than on fingerprints." I'm baffled by this statement, because it has nothing to do with my bill. But I absolutely, wholeheartedly agree—which is exactly why the Volunteers for Children Act does not address name-based checks, only fingerprint-based checks.

Last year, when I introduced this bill, one of the bill's supporters, John Walsh of Fox's TV America's Most Wanted show, pointed out a very unsettling fact. He said that his show helped catch 64 child molesters in one 6-month period alone, and that over half of them were people who worked with children as volunteers.

Volunteer organizations are like magnets for child molesters. I urge this committee to help organizations defend themselves and their children from these molesters by giving organizations what they need to identify predators. If we don't, we have only ourselves to blame when children end up paying the price.

I thank the chairman.

[The prepared statement of Mr. Foley follows:]

PREPARED STATEMENT OF HON. MARK FOLEY, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF FLORIDA

Mr. Chairman, members of the Subcommittee, I deeply appreciate the opportunity to testify today on the Volunteers for Children Act—H.R. 2488. You have all played a significant role in ensuring strong laws to protect children—and I would hope that those efforts will extend to supporting this legislation.

The Volunteers for Children Act is a very simple proposal.

In 1993, this subcommittee helped enact into law the National Child Protection Act—the so-called Oprah Winfrey Act. The law gave organizations such as schools, day care facilities and youth-serving volunteer organizations access to FBI fingerprint background checks to help ensure that they weren't inadvertently hiring convicted child molesters to tend to their young charges.

In doing this, the law recognized—as virtually every law enforcement official in the country does—that fingerprint-based background checks are the only way of conclusively identifying someone who has a criminal conviction. Name checks can be fooled by changing a name or a birthdate or a Social Security number. But a fingerprint check cannot be fooled.

The only hitch to the National Child Protection Act was this: Under the law, a school or day care or volunteer organization can have access to the FBI fingerprint database—but only if the state in which they are located has enacted a *state law*, approved by the U.S. Attorney General, allowing that access.

The good news is that, thanks to the National Child Protection Act, most states have responded by requiring either voluntary or mandatory fingerprint background checks for school teachers, school bus drivers and licensed day care providers who have direct contact with children.

The bad news is that volunteer organizations have been left out. Only about six states have any significant provisions allowing youth-serving organizations access to fingerprint-based checks. So if convicted sexual predators want easy access to children, all they have to do is look respectable, be nice and offer to help in scouting events, in soccer coaching, in any volunteer setting involving children which is *not* located in those handful of states.

The Volunteers for Children Act is no panacea. It cannot help organizations identify child molesters who have not been convicted of an offense—and sadly, that seems to be the case on most instances, because many allegations of child molestation are either not reported or involve someone who is caught for the first time.

But the Volunteers for Children Act can help organizations screen out the known predators—the hardcore ones who have been convicted and who are bent on preying on children again.

As a January 1997 report by the General Accounting Office put it: "National fingerprint-based background checks may be the only effective way to readily identify the potentially worst abusers of children, that is, the pedophiles who change their names and move from state to state to continue their sexually perverse patterns of behavior."

In some states, including my own state of Florida, efforts have been made to enact laws mandating fingerprint checks for volunteers to protect children from exactly this type of predator. But states understandably have been reluctant to impose mandates.

Some organizations themselves also have worried about the potential expense and the time it takes to get results from a fingerprint check.

Both of these concerns, however, will soon be history. The FBI expects that its new computerized fingerprint check system—IAFIS, the Integrated Automated Fingerprint Identification System—will be operational by the middle of next year. Because this system will no longer require transporting and processing paper fingerprint cards—which will eliminate much of the labor now required—the FBI expects the turnaround time and the costs for checks to drop significantly.

It estimates that turnaround will drop from seven weeks or more to about 24 hours. And costs, though still uncertain now, are expected to drop significantly from the current state/federal combined average of \$36 per request.

Mr. Chairman, as everyone here fully knows, hiring a sexual predator is every volunteer organization's worst nightmare. For years, many of them—most prominently the Boys and Girls Clubs of America—have begged us to let them have access to the only tool that will prevent this nightmare from happening—at least where known convicted child predators are concerned.

I urge this committee to support those pleas now by supporting the Volunteers for Children Act. The legislation does not usurp state laws. It merely allows volunteer organizations access to the FBI data—if they want that access—in the absence of state laws.

In support of this testimony, I am submitting copies of some of the letters I have received from various organizations concerned with volunteers, which include the Boys and Girls Clubs of America, the National Center for Missing and Exploited Children, Kids Safe, the Marc Klass Foundation for Children, the (John) Walsh Foundation, Safeguarding Our Children, United Mothers, and Child Help.

Before closing, I would also like to briefly respond to remarks made by the U.S. Justice Department to the Volunteers for Children Act. They note that the concept of the legislation is "laudable" but worry it provides little or no incentive to states to implement background check systems. My only answer to that, frankly, is that states have had five years to do so, but either have not tried or have tried but have had their efforts rejected by the Justice Department itself. In the meantime, organizations serving youths are left stranded because of the failure of legislatures and bureaucrats to get their acts together.

And in the meantime, children are being molested—like the 12-, 13- and 14-year-old boys who were molested last year in South Buffalo, New York, by a 29-year-old man they had come to know as their church youth leader and scout leader. Or the seven-year-old girl in Fort Lauderdale, Florida, who was sexually assaulted by a 22-year-old church volunteer. Only after this man was caught did the church learn he had a prior conviction for child molestation.

The Justice Department also worries that the Volunteers for Children Act 'actually minimizes the benefit of local record background checks, which are often more timely and germane to the individual's activity in the community.' In all due respect to the Justice Department, this argument simply doesn't wash.

Besides undercutting the entire reason for enacting the 1993 National Child Protection Act—which President Clinton himself signed into law—this argument overlooks the obvious. Volunteer groups are not going to go through the time or expense, however minimal, of a FBI check if they can get what they want from a free or less expensive local check.

But more important, the would-be volunteers that groups are worried about are not people from their own communities whom they know or can easily check on. They are transplants—people who have come to town from elsewhere, from other towns or other states—and whose backgrounds simply are unknown to local volunteer groups or to local law enforcement authorities.

The Justice Department also is worried that, "in the absence of state statutory guidance, the agency responsible for relaying the results of the background check must make difficult choices between the privacy rights of the applicant and the public safety concerns." This is a real concern—but not because of this bill. This bill is not intended to change the way requests for any FBI fingerprint check are handled. And every state has set procedures for dealing with this - - whether the check

is requested for school teachers or bankers. Volunteer organizations would have to follow those already prescribed state procedures, as well as those already laid out in the 1993 law the bill amends. If that isn't clear in the bill, we can make it so.

Finally, the Justice Department states that it "would oppose any further bypass of these systems that would result in the background checks based on applicant's name rather than on fingerprints." I absolutely, wholeheartedly agree—which is exactly why the Volunteers for Children Act does not address name-based checks, only fingerprint-based ones.

Last year, when I introduced the Volunteers for Children Act, one of the bill's supporters—John Walsh of Fox TV's America's Most Wanted show—pointed out a very unsettling fact.

He said the show helped catch 64 child molesters in one six-month period alone—and over half of them were people who worked with children as volunteers.

Volunteer organizations are like magnets for child molesters. I urge this committee to help organizations defend themselves and their children from these molesters by giving organizations what they need to identify predators.

If we don't, we have only ourselves to blame when children end up paying the price.

Thank you, Mr. Chairman.



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Adam Walsh Children's Fund

September 23, 1997

The Honorable Mark Foley
113 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Foley:

We wanted to express our sincere thanks for your leadership in introducing the Volunteers for Children Act. The National Center for Missing and Exploited Children (NCMEC) and Boys & Girls Clubs of America were pleased to join with you and co-sponsors including Congressman Lampson, Congressman Cramer, Congressman Franks, and Congresswoman Fowler in announcing this important step.

You asked for our comments. We are convinced that the legislation is timely and important. The vast majority of offenders who prey upon children are not strangers in the eye and mind of the child. Many seek legitimate access to children, win their confidence, and then victimize them. Unfortunately, many seek opportunities as volunteers with child-serving organizations in order to gain that access. Thus, it is imperative that we give organizations like Boys & Girls Clubs every possible tool to protect the children and youth they serve, and deny convicted offenders easy access.

Boys & Girls Clubs and NCMEC are long-time partners in this battle. We have attacked the problem through joint publications and training for employees and managers, and through promoting a policy of zero tolerance. We believe that every youth-serving organization should do everything possible to identify those who would victimize our children, and should prosecute to the fullest extent of the law those who do. Background screening is not a panacea, but at a minimum, it is something all of us must do.


Your legislation is a balanced, reasoned approach to the problem. Since the passage of the National Child Protection Act of 1993, an historic step forward, only six states have given groups like Boys & Girls Clubs access to do national fingerprint checks on would-be volunteers. Clearly, federal leadership is appropriate.

Your bill does not mandate that organizations perform national checks, but enables them. Your legislation addresses concerns about the costs to nonprofits for such checks by limiting fees to actual costs. Certainly, any cost is difficult for youth-serving organizations. Yet, it


is our view that meaningful background screening should be a prerequisite for serving youth. We must find a way.

In summary, we are grateful for the leadership and vision of you and your fellow sponsors, and look forward to working together to do more to protect America's children and youth. Please do not hesitate to let us know how we can assist.

Sincerely,



Robbie Callaway
Boys & Girls Clubs
Of America



Ernie Allen
National Center for
Missing & Exploited
Children

■ MARC KLAAS FOUNDATION FOR CHILDREN
P.O. Box 925, SAUSALITO, CA 94966
PHONE: (415) 331-6867 ■ FAX: (415) 331-5633
E-MAIL: klaas@crl.com

January 11, 1998

The Honorable Mark Foley
Representative (FL-16)
113 Cannon House Office Building
Washington, D.C. 20515

Dear Mark,

Let me first apologize for not being there in person to show my support for your very important bill -- The Volunteers for Children Act. Suffice it say I am there in spirit and offer this letter in strong support of your efforts to protect children.

As many in attendance might know, my twelve-year-old daughter Polly was kidnapped and murdered October 1993. As the parent of a child lost to preventable violence, I understand the need to take steps to protect all of America's children. The loss of Polly changed my life forever compelled me to help other families avoid the same ordeal by working to prevent such senseless crimes in the future.

This led me to co-found the Marc Klaas Foundation for Children. Based in Sausalito, California, and supported by loyal volunteers, the Foundation works to find ways to strengthen our society so that these types of crimes simply cannot happen. I believe the Volunteers for Children Act is one such solution that will help keep our kids safe.

I, along with the Marc Klaas Foundation for Children, strongly endorse the Volunteers for Children Act and your efforts Mark to gain passage of this landmark legislation in Congress. If passed, it will give volunteer organizations in all states the tools they need to protect children in their care simply by allowing these organizations access to FBI background checks of their volunteers.

Given that stockbrokers and others in even less sensitive positions must submit to background checks before being hired, I find it unconscionable that some volunteer organizations -- in whom we have entrusted the care of our children -- are prevented access to such background checks before hiring volunteers.

The Volunteers for Children Act will change that. I commend you for authoring this very important piece of legislation. We need new ideas and new leadership like this if we are to stop crimes against children in the future.

Sincerely,

Marc Klaas

Marc Klaas



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D. MICHAEL MCCARRON, Ph.D.
EXECUTIVE DIRECTOR



September 9, 1997

The Honorable Mark Foley
113 Cannonhouse Office Building
Washington D.C. 20515

Dear Congressman Foley:

Thank you for introducing the Volunteers for Children Act to allow youth serving nonprofit organizations to request federal fingerprint background checks in the absence of state laws providing that access. As you are aware, attempts to enact a Florida law are as of yet unsuccessful and your measure will help volunteer organizations such as our own to take additional steps in protecting children.

I appreciate the invitation to participate in the news conference announcing the Volunteers for Children Act planned in Washington next week. Unfortunately, my schedule will not allow me to attend. Please know we appreciate your efforts.

Very sincerely yours,

Mike McCarron (cs)

D. Michael McCarron, Ph.D.
Executive Director

DMMcrr

The Volunteers for Children Act

Sponsored by U.S. Rep. Mark Foley

- The Volunteers for Children Act gives youth-serving volunteer organizations access to FBI fingerprint-based criminal background checks *in the absence of state law providing that access.*

The 1993 National Child Protection Act -- known as the Oprah Winfrey Act -- encouraged states to give groups such as schools, day care facilities and youth volunteer organizations access to these FBI fingerprinting checks to help ensure that they weren't inadvertently hiring convicted child molesters. But there was a hitch: Under prevailing federal law, these background checks are only available if states put into place laws approved by the U.S. Attorney General specifically allowing them.

While nearly all states have approved laws providing background checks for various people, such as school personnel or day care workers, only about six give that access to youth-serving nonprofit volunteer organizations. (California, Maryland, Nevada and Tennessee have the most comprehensive laws on this, while Arizona and Texas have more limited ones.)

- The Volunteers for Children Act holds the cost of FBI fingerprinting checks to actual costs.

This cap ensures that charges absorbed by the requesting organizations do not exceed the actual costs of doing the checks. The current fee charged by the FBI is \$18 per check (although the FBI have indicated actual costs at \$13). State fees vary from \$0 for volunteers in California (as of 1996) to \$18 and up. The total state/federal cost averages \$36 per check. The federal costs are expected to decrease significantly once the FBI computerized system goes on line in 1999.

- The Volunteers for Children Act reauthorizes \$20 million for 1998-2001 for use in offsetting the costs of fingerprint-based checks.

The 1993 Oprah Winfrey Act authorized this money, but it was never appropriated and the authorization for it expired last year.

Volunteers for Children Act Q & A

1. Why is the Volunteers for Children Act needed?

To help youth-serving nonprofit volunteer organizations do the most conclusive background checks possible on would-be volunteers who would have unsupervised care of young children.

According to the FBI, the only conclusive way to identify someone with a criminal past is a fingerprint check (a name check alone cannot provide a "positive" identification.)

States can offer their own fingerprint checks, but the checks are only as good as the state borders. State checks cannot identify someone who may have been convicted of a crime in another state.

Volunteer organizations that serve children have every right to ask for the best tools available to ensure the safety of their young charges. And Congress should do whatever it can to help.

The intent of this bill is simply to remove a barrier that Congress itself created that is preventing good volunteer groups from fully protecting the young children they serve.

2. Does this Act give volunteer organizations direct access to FBI information?

No. The organizations must follow already prescribed procedures in law applicable to any group given permission to request these checks. They must make their requests through local law enforcement agencies and the designated state agency. (Each state has such designated agencies, such as the state Attorney General's office or the Public Safety Department.) They also must follow the process in existing law over how to request the FBI check. (The procedures include a local law enforcement official taking a set of 10 prints and the person to be checked signing a statement allowing the check.)

3. Does this FBI check mean that anything a would-be volunteer might have been convicted of in the past becomes known to the volunteer organization requesting the check?

No. Existing laws (which are not changed by this bill) ensure that only information considered relevant to the position a would-be volunteer is applying for would be relayed to the requesting organization by law enforcement officials. Existing federal law already protects this information, as in the case of school teachers and day care workers.

4. Would this Act, if enacted into law, make volunteer organizations that don't take advantage of it more liable if something happens involving a volunteer the organization did not do a fingerprint check on?

Volunteer organizations already are susceptible to liability if something happens, since in many instances they already have access to at least local and state background checks.

This bill has been sought by those groups -- like the Boys and Girls Clubs of America - - that are trying to offer a measure of protection that they are now being denied. It is intended to help them avoid such liability by giving them the tools they need.

Volunteers for Children Act
Q & A – Page Two

5. Why haven't states enacted their own laws giving this access themselves?

In many instances, because states have entertained mandates rather than voluntary access. And volunteer organizations, for a host of reasons ranging from time to costs, have not been comfortable with the idea of requiring – rather than allowing – these background checks.

6. Does this bill preempt state laws?

No. The bill only applies to organizations located in states that have no laws governing access to FBI fingerprinting checks by volunteer organizations. If a state has a law in place, this bill does not apply. If, in the future, a state enacts its own laws covering volunteer organizations, this bill would not apply.

7. Which organizations have endorsed this bill?

We have not sought endorsements so far; the focus to date has been on drafting legislation that will help protect both volunteer organizations and the children they serve.

Nationally, however, the Boys and Girls Clubs of America have endorsed the bill on their own, as has the National Center for Missing and Exploited Children, Kidsafe, the Walsh Foundation (John Walsh) and the Marc Klaas Foundation for Children. In Florida, the Catholic Conference has endorsed the bill.

8. Does this bill give special access to volunteer organizations that other entities cannot have?

No. Under the National Child Protection Act of 1993 (the "Oprah Winfrey Act"), states were encouraged to provide this access, through state laws, to any group or entity that directly dealt with children. Many states since have enacted laws doing this – although predominantly for school employees and day care workers. Only a handful of states have enacted laws providing FBI fingerprinting checks to volunteer organizations – and only about four (California, Maryland, Nevada and Tennessee) have broad enough laws to encompass most youth-serving volunteer groups.

9. If this bill is enacted, will all volunteer organizations, even small local groups that cannot afford it, have to undertake FBI fingerprinting checks on all volunteers?

No. This is strictly a voluntary bill. *It's about access, not about mandates.* It merely removes a barrier that Congress itself set so that those who want this access can have it.

The Palm Beach Post

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Predators, stay home

It's come to this: To protect children, a bill introduced by U.S. Rep. Mark Foley, R-West Palm Beach, would allow not-for-profit organizations that serve kids to identify volunteers with criminal records through FBI fingerprint checks.

The Volunteers for Children Act would amend the National Child Protection Act of 1993, which encouraged states to give schools, child-care centers and youth groups access to files that could protect kids from predators. The law requires states to pass laws allowing access. Rep. Foley's bill would provide it in states that haven't done so.

State Rep. Luis Rojas, R-Hialeah, sponsored similar legislation last year in Florida. That bill would have let a parent ask in writing that a volunteer be fingerprinted. The parent would pay the fee. A proposed amendment would have required the organization to do it.

Rep. Foley's bill is voluntary. If parents ask their child's coach or scoutmaster to fingerprint a volunteer, any action would still be at the discretion of the organization. What would the group's liability be if it refused? "Volunteer organizations now think their risks are greater if they don't do this," Rep. Foley said. But there is also a risk in thinking a background check will identify all predators, since crimes against children are the least prosecuted.

Requests for background checks would be made through local law en-

A bill proposed by Rep. Mark Foley would let parents ask for fingerprint checks on volunteers who work with kids.

forcement agencies, which would do the fingerprinting. Only information related to the position a person is seeking would be provided. For organizations that serve kids, information would pertain to crimes against children.

An estimated 1 million Floridians chaperone groups on field trips and help with other children's activities. Rep. Foley's bill would ensure that fingerprinting charges don't exceed the cost. It also would reauthorize \$20 million for 1998-2001 that the 1993 law authorized but Congress never appropriated.

According to a General Accounting Office report released last year, fingerprint-based checks are the only effective way to identify the worst offenders, especially those who move from state to state and change their names.

Smart child molesters, of course, would not allow themselves to be found out. For them, the law would be preventive, keeping some very sick people from even thinking about joining volunteer groups. For those who can't control their behavior, identifying such predators before they have access to children could save lives.

Proposal allows criminal checks

Volunteers who work
with children targeted

By JILL YOUNG MILLER
Washington Bureau

WASHINGTON — Four years ago, Congress passed a law allowing organizations that work with children to use FBI crime records to screen volunteers — but only if the states passed similar laws themselves.

Yet states have been slow to react, so Rep. Mark Foley, R-West Palm Beach, wants to remove that requirement.

A bill he introduced on Wednesday would allow groups in all 50 states to ask for fingerprint and background checks of all volunteers who work with children.

"National fingerprint-based background checks may be the only effective way to readily identify the potentially worst abusers of children," Foley said. "That is, the pedophiles who change their names and move from state to state."

While the proposed law would allow organizations access to criminal records across the country, it wouldn't force them to use that access.

*Sun Sentinel
Ft. Lauderdale*

Cong. Mark Foley PBC

The bill's intent is "to simply remove a barrier ... preventing good volunteer organizations" from protecting children, Foley said.

Florida state law currently requires background checks of teachers and child-care workers, but not of volunteers. A statewide bill similar to Foley's died in the Florida Legislature earlier this year.

The "Volunteers for Children Act" has bipartisan support in the House, and the endorsement of the National Center for Missing and Exploited Children, the Boys and Girls Clubs of America and the Florida Catholic Conference.

"The vast majority of the people who prey upon children are not strangers in the eye and mind of the child," said Ernie Allen, president of the National Center for Missing and Exploited Children. "This is an important step. We know that most of those people molesting — victimizing — children seek legitimate access to children."

The National Child Protection Act of 1993 paved the way for states to enact laws requiring background checks of volunteers who work with children. Since then, only a handful of states have passed laws allowing such checks.

"This is a needed, needed piece of legislation," said TV host John Walsh, whose son, Adam, was abducted from a Hollywood mall in 1981 and murdered. "I'm sick of profiling these guys on *America's Most Wanted*." That show helped to catch 64 child molesters in one six-month period, he said, "and over half of them were people who worked with children as volunteers."

The FBI checks would cost organizations about \$18 each, according to information from Foley's office.

Organizations wouldn't have direct access to FBI information but would make their requests through local and state law enforcement agencies. Under an already existing law, only information considered relevant to volunteers' jobs could be given to organizations.

"We all wish that our communities could be a place like Cheers, where everybody knows your name," said Rep. Tillie Fowler, R-Jacksonville, who supports the bill. "But unfortunately that isn't true."

Sun-Sentinel

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EDITORIALS

Check backgrounds of volunteers to catch abusers who prey on kids

It was a good plan: The National Child Protection Act of 1993 paved the way for states to enact laws requiring background checks of volunteers who work with children. If the states passed such laws, then organizations that work with children would be allowed to use FBI crime records to screen volunteers.

Why any state would fail to take advantage of the offer is hard to imagine, but the fact is, only a half-dozen states, not including Florida, have bothered to sign on. For this reason, Rep. Mark Foley, R-West Palm Beach, introduced a bill on Wednesday that would clear the way for groups in all 50 states to ask for fingerprint and background checks of all volunteers who work with children.

Revised plan, same result, and still a good idea.

National fingerprint-based background checks are the surest way — possibly the only way — to catch the pedophiles who change names and move from state to state. With each move, these dangerous people seek legitimate access to children, and don't think they aren't aware of the warm welcome accorded a volunteer by the often-frazzled professionals who deal with children.

According to the National Center for Missing and Exploited Children, which supports Foley's bill, the vast majority of the people who prey on children are not "strangers" in the eye and mind of the child.

That's why Florida state law requires background checks of teachers and child-care workers. But it doesn't require the same thing of volunteers in the same room, and what kind of sense does that make? Not much, but a statewide bill similar to Foley's died in the Florida Legislature earlier this year, perhaps while legislators were busy voting stadium tax breaks for a Florida

WHAT TO DO

Write your members of Congress in support of the Volunteers for Children Act:

- Sen. Bob Graham, 424 Hart Senate Office Building, and Sen. Connie Mack, 517 Senate Office Building, Washington, D.C. 20510.
- Rep. Robert Wexler, 1609 Longworth House Office Building; Rep. Alcee Hastings, 1039 Longworth House Office Building; Rep. Peter Deutsch, 204 Cannon House Office Building; and Rep. E. Clay Shaw, 2267 Rayburn House Office Building, Washington, D.C. 20515.

Foley's bill has bipartisan support in the House, and the endorsement of the Boys and Girls Club of America and the Florida Catholic Conference. John Walsh, whose son, Adam, was abducted from a Hollywood mall in 1981 and murdered, is host of the television show *America's Most Wanted*. He said the show helped to catch 64 child molesters in one six-month period and "over half of them were people who worked with children as volunteers."

While the proposed law would allow organizations access to criminal records across the country, it wouldn't force them to use that access. Foley says the bill "simply removes a barrier ... preventing good volunteer organizations from protecting children. The FBI checks would cost organizations about \$18 each and would be funneled to the FBI through local and state law enforcement agencies. Only information considered relevant to the volunteers' jobs could be released.

The states had their chance on this and blew it. Let the feds to step in and get the job done.

The News Sunday, September 21, 1987

The Street News



Youth groups applaud Foley's bill

The legislation would allow organizations to run national fingerprint checks.

By Joseph Hadden
Baltimore correspondent

WASHINGTON — Officials with the St. Lucie County Boys and Girls Club were astonished to find recently that a state criminal background check of a potential volunteer revealed a sexual assault conviction in Broward County.

"This person had charmed everyone," Executive Director Anthony Howard said. "We were all taken with him, so it was shock and awe. It's pretty scary the way people present themselves."

If the applicant's conviction had surfaced in another state, the club might never have found out about it.

Under the law, volunteer youth organizations in Florida are prohibited from requesting federal background checks on people seeking to work with children.

The Boys and Girls Clubs of America and the National Center on Missing and Exploited Children are supporting legislation in federal law that aims to streamline such barriers.

U.S. Rep. Mark Foley, a Republican from West Palm Beach, introduced a bill Wednesday that would enable organizations to run fingerprint checks through the FBI.

Foley's bill would amend the

National Child Protection Act of 1993, which says states can enact laws giving youth organizations the right to perform national fingerprint checks. But only six states have passed such legislation, and Florida isn't one of them.

"The '93 act was really meaningless and ineffective. We're finally putting teeth in the legislation," said Jody Gorras of Palm Beach, who recently founded the National Foundation to Prevent Child Sexual Abuse.

After an unsuccessful bid to get a law passed in the Florida Legislature this year, Gorras is spending \$100,000 of his money to get one on the federal books. He hopes the money will be used to take witnesses to Washington to testify in congressional hearings on Foley's bill.

John Walsh, host of Fox Television's America's Most Wanted, was present with Gorras at a press conference at the Capitol when Foley introduced the legislation.

Walsh, who lives in Vero Beach, said that his show led to the arrest of 64 child molesters in six months, half of whom were volunteers with youth organizations such as the Boys and Girls Clubs.

"What's a better place to take advantage of an underprivileged child?" Walsh asked. "You should be able to know that the person working with your child is not a convicted child molester."

Youth organizations statewide agree.

"This is just one more safeguard, one more step for us to

“

"This is just one more safeguard, one more step for us to take."

— Mary Boyce-Johnson

taka," said Mary Boyce-Johnson, executive director of the Boys and Girls Club of Collier County. "I just feel that [local and state background checks] are not enough. I think most of us feel that way."

Boyce-Johnson thinks that's especially true in Florida, where so much of the state's population is transient. She estimates that 85 percent of her volunteer applicants are moving, or have recently moved, to the area from another state.

Kita Dion faces the same problem in Vero Beach. Because her Youth Guidance program in Indian River County does not have access to FBI records, it must fill out "major paperwork" with other states willing to share their criminal records, she said. And not all states are willing to share, she added.

"I think this is probably the most important thing to me," she said. "I have to go through all kinds of hoops. It is not only very costly, it takes a very long time and people lose interest in the program."

But people should not be lulled into a false sense of security just because they have the ability to perform a national background check.

Records with the Bureau of Justice Statistics suggest that there might be thousands of offenders who never have been arrested, so therefore have no arrest records.

Between 1993 and 1995, the bureau surveyed nearly 1.3 million incidents of sexual assault or rape, but only 390,000 of them were reported to law enforcement.

The Boy Scouts of America acknowledges such discrepancies, and has not yet taken a stand on the new legislation.

"We understand that criminal background checks are not perfect," national spokesman Gregg Shields said.

Instead, Boy Scouts follow an intensive internal screening process in which prospective volunteers have to go through three levels of interviews. In addition, pack leaders, Scouts and parents are continuously educated on how to detect sexual abuse, and on outings no adult can be alone with fewer than two Scouts.

"We feel that our system is more effective for our organization," Shields said.

For people such as Howard, one can never be too safe. She realized that for herself, she said, after learning a cheating applicant who had a less-than-convincing past.

"We have actually been able to see what we avoided," Howard said. "There's certainly never any guarantee that you'll pick them out . . . but we do a statewide check, and we'd feel even more comfortable if we could do it statewide."

Mr. McCOLLUM. Thank you, Mr. Foley.
Mr. Franks?

**STATEMENT OF HON. BOB FRANKS, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. FRANKS. Mr. Chairman, first, I'd like to commend you for putting forward legislation that's going to be of enormous value to America's families and America's children.

This morning, I wanted to bring to your attention several other measures that would provide additional protection for our kids. One of these measures involves the Internet. We've all seen media accounts of pedophiles using the Internet to seek out victims as well as kiddie porn operators peddling their smut over the net. Currently, most Internet service providers respond to complaints of suspected child abuse or sexual exploitation involving children by removing the offender from their system. They are not, however, legally required to take the next, more important step and report these activities to law enforcement officials. As a result, child predators are free to move to a different Internet service provider or re-register under a fictitious name.

The Child Abuse Notification Act would require ISPs to report to law enforcement authorities any instances of suspected child abuse they discover or that are brought to their attention by customers. In addition, they would have to turn over any evidence that could be used to document these allegations. Importantly, this bill does not mandate any new or additional monitoring by ISPs. Moreover, ISPs would be protected from any criminal or civil liability if they, in good faith, contact law enforcement with information on possible child abuse.

Under current law, teachers, doctors, nurses, social workers, and even photo developers already have a legal obligation to report evidence of suspected child abuse. This bill merely seeks to add Internet service providers to those who have an affirmative duty to report suspected acts of abuse against our children. It should be noted that the exact language of this bill was suggested by the Department of Justice in a 1996 letter to Congress.

The second measure I would ask the committee to consider is the result of an incident with which I have become personally familiar. Nearly 5 years ago on July 26th, 1993, Rosemarie D'Alessandro of Hillsdale, New Jersey received a devastating phone call. The man who was convicted of sexually assaulting and murdering her 7-year-old daughter, Joan, was again eligible for parole. It was the second time in 6 years the D'Alessandro family had to face the prospect of Joan's killer being set free. Joan's Law which I introduced last summer would spare any other family from going through the same ordeal. It would mandate a sentence of no less than life imprisonment to be imposed on anyone who commits a serious, violent felony that results in the death of a child under the age of 14. Let me be clear that this bill still enables Federal prosecutors to seek the death penalty in all those cases where it is now permitted. No family, no matter where they live in the United States should ever have to endure the double tragedy of losing a child in a heinous act of a violent criminal and then watching that child's killer walk out of prison a free man. This legislation sends

a clear signal that we will not tolerate the killing of America's innocent children.

Lastly, there's another threat to our children safety and privacy that many parents are unaware of. It comes as a result of the unrestricted sale of personal and often sensitive information about our children by commercial list brokers. Every time a parent signs up a child for participation in a birthday club at a local fast food restaurant or ice cream store; fills out a warranty card for a new toy or computer game, or allows a child to be included in a school directory, they could be putting their child at risk. These businesses and institutions often turn around and sell that sensitive information about our kids to a third party who has nothing to do with the purpose for which the information was originally provided. Anyone with a mailing address can contact the list vendor and order a specific list. It might be the names, addresses, and phone numbers of all children living in a particular neighborhood or a list of all 10-year-old boys in a suburban community who have a particular video game system. The danger of this information winding up in the wrong hands is very real and very frightening as a Los Angeles television reporter discovered last year. A reporter from KCBS television was able to purchase a list of children's names, addresses, gender, and age living in the Pasadena area using the name of Richard Allen Davis, the man convicted of murdering 12-year-old Polly Klaas.

The logic behind the Child Protection and Parental Empowerment Act is simple. It would give parents control over the sale of personal information about their own children. It would prohibit the sale of personal information about a child without a parent's consent. The bill has drawn strong support from a broad cross-section of organizations who are dedicated to protecting children including the National PTA, the Christian Coalition, the Center for Media Education, Enough is Enough, the Family Research Council, and Kid's Off List Coalition. In today's high-tech information age, when access and information about our personal lives is just a keystroke or phone call away, our children need the special protection that this legislation provides.

I would ask the committee to examine these and include them where appropriate in the provisions of the Child Protection and Sexual Predator Punishment Act of 1998. Thank you, Mr. Chairman.

[The prepared statement of Mr. Franks follows:]

PREPARED STATEMENT OF HON. BOB FRANKS, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEW JERSEY

As Co-Chairman of the Congressional Missing and Exploited Children's Caucus, I recognize that our children are living in a dangerous world. Our children face risks to their safety that never existed when we were growing up.

Mr. Chairman, I would like to commend you for putting forth legislation that would address many of these dangers.

I would like to bring to your attention several other measures I am sponsoring that I believe would provide additional layers of protection for our kids.

One of them involves protecting children in cyberspace. The Internet is an exciting and wonderful tool, but when put in the wrong hands it can have a dark and threatening side. We have all seen media accounts of pedophiles using the Internet to find victims, as well as kiddie porn operators peddling their trade over the net.

The Child Abuse Notification Act was introduced in July of 1996 at the suggestion of the US Department of Justice. It would require Internet Service Providers to re-

port to law enforcement authorities any instances of suspected child abuse it discovers or that are brought to its attention by users. It would also require Internet Service Providers to turn over to law enforcement any evidence they have gathered which would support a charge of child abuse. My bill protects Internet Service Providers from any criminal or civil liability if they—in good faith—contact law enforcement to report suspected child abuse.

Teachers, doctors, nurses, social workers and photo developers already have a legal obligation to contact law enforcement authorities if they believe that someone is abusing a child. This bill merely seeks to add Internet Service Providers to the list of those entities responsible for reporting instances of suspected child abuse.

Currently, most Internet Service Providers respond to complaints of suspected sexual abuse or exploitation involving children by removing the offender from their system. They are not required to report these instances of suspected child abuse to law enforcement for possible prosecution. As a result, child predators are free to move to a new provider or re-register under a different name.

The current law actually stands in the way of Internet Service Providers turning over to law enforcement information that can be used to support allegations of sexual abuse on the Internet. The law prohibits these service providers from divulging to law enforcement the contents of communications that could indicate criminal activity unless it was obtained "inadvertently."

The Child Abuse Notification Act would give law enforcement an important new tool in combating child abuse in cyberspace.

Nearly five years ago on July 26, 1993, Rosemarie D'Alessandro received a devastating phone call. She was told that Joseph McGowan, the man convicted of sexually assaulting and murdering her seven-year-old daughter, Joan, was again eligible for parole. It was the second time in six years the D'Alessandro family had to face the prospect of Joan's killer being set free.

Since the day she received that phone call, Rosemarie vowed to make sure that no other family would have to go through the horrifying prospect of seeing their child's killer walking out of prison a free man.

As a direct result of the extraordinary determination, courage, and sheer effort of Rosemarie D'Alessandro and her family, Governor Christine Whitman signed New Jersey's "Joan's Law" in April of last year. It guarantees that anyone convicted of murdering a child under the age of 14 in conjunction with a sexual assault will be sentenced to life in prison—with no possibility of parole.

Specifically, my federal bill would mandate a sentence of no less than life imprisonment—with no opportunity for early release—be imposed on anyone who commits what is referred to in the federal criminal code as a "serious violent felony" that results in the death of a child under the age of 14.

Let me be clear that this bill still enables federal prosecutors to seek the death penalty in all those cases where it is now permitted under federal law.

It is also important to note that my legislation goes even further than New Jersey's "Joan's Law." Not only would someone who sexually abuses and kills a child be imprisoned for life, it covers 15 other violent offenses where the commission of these crimes results in the death of a child under the age of 14. These violent crimes include sexual exploitation, car-jacking, robbery, kidnapping, extortion and arson.

It is my goal, however, not only to make "Joan's Law" a federal statute, but to have it serve as a national model for other states to enact.

As we sit here today, there are 6,500 inmates locked away in state jails across the country for murdering a child.

Not one of these criminals should ever be set free. No family, no matter where they live in the United States, should ever have to endure the double tragedy of losing a child to the heinous act of a violent criminal and then watching that child's killer walk out of prison a free man.

This legislation sends a clear signal that we will not tolerate the killing of innocent children. This bill will serve as an enduring legacy to a happy, smiling little girl whose life was violently and tragically cut short when she stopped by a neighbor's house to deliver Girl Scout cookies. It's also a tribute to her parents, Rosemarie and Frank, who have worked tirelessly to spare other families the nightmare they have lived through for the past 25 years.

There's another threat to our children's safety and privacy that many parents are unaware of. It comes from the unrestricted sale of personal and often sensitive information about our children by commercial list brokers.

Every time a parent signs a child up for a Birthday Club at a local fast food restaurant or ice cream store, fills out a warranty card for a new toy, completes a consumer survey at the local supermarket, or allows a child to be included in a school directory, they could be putting their child at risk.

The fact is that these businesses often sell these lists of children, which often contain sensitive descriptive information, to individuals, companies and organizations who want to sell a product or service to parents or their children.

Currently parents have no way of knowing that information about their kids is being bought and sold, and are virtually powerless to stop it if they disapprove.

List vendors today sell this information to whoever wants to purchase it. Anyone with a mailing address can contact a list vendor and order a specific list. A buyer might be after the names, addresses and phone numbers of all children living in a particular neighborhood—or a much more detailed list, such as all ten-year-old boys in a suburban community who have a particular video game system. And the cost of this information is relatively inexpensive, just a few cents a name.

But the danger of this information winding up in the wrong hands is very real and very frightening—as a Los Angeles television reporter discovered. In May of 1996, this reporter was able to purchase a list of 5,000 children living in a several neighborhoods in the Pasadena area using the name of Richard Allen Davis—the man convicted of kidnaping and murdering 12-year-old Polly Klaas. The reporter gave a disconnected phone number and paid COD—\$277.

The Children's Privacy and Parental Empowerment Act would give parents control over the sale of personal information about their children. Specifically, it would prohibit the sale of personal information about a child without the parent's consent. In addition, the legislation would give parents the right to compel list brokers to release to them all the information they have compiled about their child. List vendors would also have to turn over to the parents the name of anyone to whom they have distributed personal information about their child.

It also addresses a shocking practice uncovered at a Minnesota prison. A prisoner, who was serving time for molesting a children, was compiling a detailed list of children—including not only their names, ages and addresses but such personal information as "latchkey child" or "beauty contest winner." Authorities believe he was planning to sell the list to pedophiles over the Internet. Specifically my bill prohibits prisoners and convicted sex offenders from processing personal information on children.

The bill also forces list vendors to be more diligent about verifying the identity of companies and individuals seeking to buy lists of children. Specifically, it would be a criminal offense for a list vendor to provide personal information about children to anyone it has reason to believe would use that information to harm a child.

The bill has drawn strong support from a broad cross-section of organizations who are dedicated to protecting children including the PTA, the Christian Coalition, the Center for Media Education, Enough is Enough, the Family Research Council and the Kids Off List Coalition.

In today's high-tech information age—when access to information about our personal lives is just a keystroke or phone call away—our children need the special protection this legislation provides.

Across America, parents are fearful for their children's safety and privacy. Even in quiet suburban and rural communities, parents no longer allow their children to go out and explore their neighborhoods on their own or even with their friends. They not only warn their children about talking to strangers, they rightfully caution them about giving out personal information over the Internet.

There is no more important priority for the federal government than keeping our children safe and secure. Therefore, I urge the Committee to include these much needed child protection provisions in the Child Protection and Sexual Predator Punishment Act of 1998. They would further strengthen an important piece of legislation that can help keep our kids safe.

Mr. McCOLLUM. Thank you, Mr. Franks.

Mr. Gutknecht, you're recognized.

STATEMENT OF HON. GIL GUTKNECHT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA

Mr. GUTKNECHT. Mr. Chairman, I would like to first of all show a video of an NBC news program, and it really is sort of an update on what has happened since Congress passed Megan's Law. It's rather eye opening. It runs about 6 minutes.

[Video shown.]

Mr. Chairman, I—let me, first of all, thank you for the work of this committee and thank you for allowing me to show that tape.

I think this hearing and the work that you've done is very important, and I know I've taken up some of my time with the video, so I'll keep my comments brief.

I'm honored to join my colleagues to discuss how we can better ensure the safety of our country's children. I can't think of an issue that's more important than this one. As the public eye report just showed you, over 2 years ago Congress passed Megan's Law which requires States to develop programs to notify communities when a sexual predator is released from prison and moves into their neighborhood. While most States are moving forward to implement Megan's Law, we have seen that many are facing both legal challenges and confusion as to what plan is both constitutional and effective.

Because Megan's Law is too important to risk creating any confusion, I have introduced a resolution to provide States with a model community notification program that they can follow if they choose. Let me emphasize, this is in no way a congressional mandate. This is only a model which is based on successful notification programs in 11 States including my home State of Minnesota. Very simply, this resolution encourages States to set up an advisory board when a sex offender is released from prison. This board will recommend that the sentencing court give him a designation based on the degree of likelihood that this offender will repeat his crime. If the risk is low, the individual will be assigned a tier 1 designation, and the local law enforcement agencies will be notified as to his release. If the risk of the repeat offense is moderate, he will be assigned a tier 2 designation, and law enforcement officials, victims' organizations, and any of the offender's past victims are notified of his address.

Finally, if the risk of the repeat offense is high, the offender, having served his prison time, is released into the community, he is given a tier 3 designation, and the general public is notified of his new residence.

This resolution also encourages States to implement community notification programs where neighbors and law enforcement officers can meet together before a convicted sex offender moves into their community. This has proven to be very helpful in Minnesota where over 1,000 members of the general public met when the first of these meetings was held in the twin cities last year.

The response I've received regarding this bill has been very positive. I will say, though, there are some people who are reluctant to change the status quo. There are some who think that the laws we currently have are good enough for our children. Well, I would ask any of those people if they would want to send their children to a playground where over 200 convicted sex predators are living in the same zip code and no one has notified the parents?

I believe we in Congress owe it to our children to do better. Let me say, also, that I am very pleased with the support this bill has received in Congress. So far, I have 34 co-sponsors in the House. Coincidentally, we have 17 Republicans and 17 Democrats including Congressman Graham. I'm also extremely grateful to have the support of the National Center for Missing and Exploited Children, the Klaas Foundation for Children, and the Jacob Wetterling Foundation. In addition, I am happy to announce that Senator Charles

Grassley, a member of the Senate Judiciary, Committee, will soon introduce this resolution in the Senate.

Let me conclude by saying that I as I listen to stories here today and other stories in the last year and a half and look at the faces of parents of missing children, I'm reminded of a quote by Senator Hubert Humphrey from Minnesota who said, "If you love your God, you must love his children." These are fitting words for all those and all those in this room who are working tirelessly to recover and protect missing children. I want to thank, again, the committee and will be happy to answer any questions that you may have.

[Prepared Statement of Mr. Gutknecht follows:]

PREPARED STATEMENT OF HON. GIL GUTKNECHT, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF MINNESOTA

Let me first thank the committee for allowing me the time to come here to discuss this important issue. I know I have taken up a bit of time with the video you just viewed, so I will keep my remarks brief.

I am honored to join my colleagues to discuss how we can better ensure the safety of our country's children. I can't think of an issue that is more important than this one.

As the *Public Eye* report just showed you, over two years ago Congress passed *Megan's Law*, which requires states to develop programs to notify communities when a sexual predator is released from prison and moves into their neighborhood. While most states are moving forward to implement *Megan's Law*, we have seen that many are facing both legal challenges and confusion as to what plan would be both constitutional and effective. Because *Megan's Law* is too important to risk creating any confusion, I have introduced a resolution to provide states with a model community notification program that they can follow if they choose.

Let me emphasize this is in no way a congressional mandate. It is only a model which is based on the successful notification programs of 11 states, including my home state of Minnesota.

Very simply, this resolution encourages states to set up an advisory board. When a sex offender is released from prison, this board will recommend that the sentencing court give him a designation based on the degree of likelihood that he will repeat his crime. If the risk is low, the individual will be assigned a "Tier 1" designation, and local law enforcement agencies will be notified as to his release. If the risk of repeat offense is moderate, he will be assigned a "Tier 2" designation, and law enforcement officials, victim organizations, and any of the offender's past victims are notified of his address. Finally, if the risk of repeat offense is high, and the offender, having served his prison time, is released into the community, he is given a "tier 3" designation, and the *general public* is notified of his new residence.

This resolution also encourages states to implement a community education program, where neighbors and law enforcement officers can meet together before a convicted sex offender moves into their community. This has proved to be very helpful in Minnesota, where over 1000 members of the general public met at the first of these meetings in the twin cities last year.

The response I have received regarding this bill has been overwhelmingly positive. I will say, though, there are some people who are reluctant to change the status quo. There are some who think the laws we currently have are good enough for our children. Well, I ask if anyone here would want to send their children to a playground where over 200 convicted sexual predators are living in the same zip code and no one has notified you? I believe we in Congress owe it to our children to do better.

Let me also say that I am very pleased with the support this bill has received in Congress. So far I have 34 cosponsors in the House, (17 Republicans and 17 Democrats, including Congressman Graham). I'm also extremely grateful to have the support of the National Center for Missing and Exploited Children, the Klaas Foundation for Children, and the Jacob Wetterling Foundation. In addition, I'm happy to announce that Senator Charles Grassley (R-IA) will soon be introducing this resolution in the Senate.

Let me conclude by saying that as I listen to the stories and look into the faces of the parents of missing children, I am reminded of a quote by Hubert Humphrey who said "if you love god, you must love his children." They are fitting words for all those who tirelessly work to recover missing children.

I thank the committee for their time and I will be happy to answer any questions you may have.

Mr. MCCOLLUM. Thank you, Mr. Gutknecht, and I will start with a question of you since you're current on my mind. We had in a bill last year dealing with improvements to the Jacob Wetterling Act, and in that bill we provided a considerable amount of flexibility, in fact, encouraged that with regard to States. Your resolution would call for some uniform national standards. How do we reconcile those two?

Mr. GUTKNECHT. Well, it doesn't really call for uniform standards. What it does is says to States, if you're having problems implementing a plan—as a former State legislator, I really don't like Federal mandates, and I'm a proponent of States' rights and some flexibility, but what we've seen in the tape is there's a huge variety of different proposals out there. Some are much better than others, and what we really want to do is provide some direction, if you will, to the States. We're not saying that they have to implement these guidelines, but we do believe after visiting with legal experts all over the country that the proposal that we're looking at meets the constitutional test as well as protects communities much better than they're being protected today. So, I'm not calling for this as a national mandate. This would be put into statutes in effect as a resolution saying that if States decide to adopt this, one of the benefits we believe that if it was decided to be appealed to the Supreme Court there would be one appeal, and the Justice Department could help defend that case, and I believe that it would meet the constitutional muster.

Mr. MCCOLLUM. Thank you. Mr. Franks, one of your bills, H.R. 2122, receives pretty favorable review with regard to the idea of a mandatory life sentence by a lot of critics, but the other bills have more critics saying things negative about them, so we tend to focus on that, and that's what I'm going to do, albeit, you've got three of them here today.

What kind of burden do you anticipate that H.R. 2173, the Child Abuse Notification Act, might put on Internet Service Providers? Do you think they would be obligated under the language of your bill to take affirmative steps or not?

Mr. FRANKS. Mr. Chairman, I believe very strongly that we ought not impose new or additional monitoring burdens on ISPs. I would merely like to add ISPs to the list of those in our society who have businesses that frequently come into contact with children and have special access to knowledge that children may, in fact, be being exploited or molested. ISPs, unfortunately, have customers who are predators, and the Internet is the fastest growing medium through which these people tend to identify their victims. I think that should place some burden on ISPs once they come upon knowledge that these abusive activities may be taking place to report them to a law enforcement agency.

Mr. MCCOLLUM. But not to look for it; just if the knowledge comes on them.

Mr. FRANKS. No, sir; no additional or new burden of monitoring.

Mr. MCCOLLUM. The Justice Department's a little critical because they say you don't provide any sanctions for them when they do come aboard if they see it even though it's totally within their

purview and they fail to report it. Do you think any sanctions should be in the law for not reporting; for failing to report?

Mr. FRANKS. Mr. Chairman, the same penalty would apply to teachers, doctors, photo developers, and others who would fail under existing law to report these incidents of child abuse to the appropriate law enforcement agency.

Mr. MCCOLLUM. Do you know what that is?

Mr. FRANKS. I believe it's a Class B misdemeanor resulting in no more than 6 months in prison or up to a \$5,000 fine.

Mr. MCCOLLUM. Last question regards H.R. 1972, the Children's Privacy Protection Act. I understand the Federal Trade Commission is now overseeing the mail list industry, and I'm curious to know if you are aware of any efforts they're making to regulate the Internet in direct marketing. My understanding is they may be currently preparing some kind of report. Are you familiar with this?

Mr. FRANKS. Mr. Chairman, not only am I familiar with it, I've testified before them a number of times along with Congressman Markey and others, and I commend the FTC for looking into this issue. I believe, Mr. Chairman, that having done a good deal of research on this issue and talked to literally hundreds of parents who are literally horrified to come upon knowledge that when they submit information to the birthday club at their local fast food restaurant, that that fast food restaurant company turns around and sells it to someone wholly unrelated to the purposes for which that information was originally provided, they want us to do something now. In my judgment, on this narrow issue, we need not wait for the FTC, but I do know that they are undertaking this analysis.

Mr. MCCOLLUM. Mr. Foley, your bill you've explained quite well, and you apparently saw in the advance the testimony as we did get it earlier from the Justice Department and addressed their criticisms, but I'm curious if under your proposal a volunteer organization requests a fingerprint background check, does that request go directly to the Federal Government?

Mr. FOLEY. No, it does not. It has to follow the same steps as necessary today. Local law enforcement process the request; send it up to the FBI, so there's no chance for them to bypass the system.

Mr. MCCOLLUM. Is there any provision in your proposal that would compel the States to cooperate?

Mr. FOLEY. Well, obviously, we tried to do that in the 1993 act and get them to pass similar legislation. Since they failed to that, that is why the necessity for this bill. But we don't compel them any further because, again, we've made it

voluntary. We don't want to mandate this on the States nor on the volunteer organizations; just make it available to them.

Mr. MCCOLLUM. All right. Thank you very much. Ms. Jackson Lee?

Ms. JACKSON LEE. I thank the chairman very much, and, Mr. Chairman, I would like to take a moment of my time to ask unanimous consent to submit my opening statement in the record.

Mr. MCCOLLUM. Without objection, so ordered.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF HON. SHEILA JACKSON LEE, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TEXAS

First of all, Mr. Chairman, I want to thank you for holding these important hearings on a series of legislative initiatives that were obviously created for the purpose of protecting our children. Your bill, Mr. Chairman, H.R. 3494, The Child Protection and Sexual Predator Punishment Act of 1998, is a clear and decisive statement to our many constituents and the nation at large, that we will not tolerate the abuse and pedophilic stalking of our children.

As the Founder and Chair of the Congressional Children's Caucus, I can assure you that one of my primary concerns during my tenure in the House has been the improvement of the conditions that have had a negative effect on the only truly innocent members of our society, our children. Too many of our children in this nation are gripped by the brutal social realities of poverty, miseducation, disease and crime, and so many of them have very little hope that a change for the better is in their future. I believe, wholeheartedly, that we, in this Congress, must dedicate ourselves to being a force of change in these children's lives.

As for the particular child safety issues that are addressed by the Chairman's bill, I am sure that no one would disagree with the statement that too many of our children have fallen victim to the carefully disguised guile of morally bankrupt sexual predators. For years, our concern was focused on how to keep these "predators" away from our children's schools, playgrounds and homes, but seemingly overnight, the world has become a different place.

Now, pedophilic fiends are able to seduce and incite our youth over the Internet. We have all heard the recent stories of adult men trying to plan sexual rendezvous with young girls in what are called Internet "chat rooms". These chat rooms, or web sites where people can anonymously communicate with one another by computer, are now becoming the favorite "hunting ground" of our sexual predators. H.R. 3494, however, would prohibit contacting a minor over the Internet for the purpose of engaging in illegal sexual activity or knowingly transferring obscene materials to a minor over the Internet, and thus give our law enforcement agencies the clarity in the law they need to go after these vile sexual deviants.

This legislation is the culmination of the December 1996 Federal Bureau of Investigation inquiry into sexual predators on the Internet. In December 1996, the FBI announced that it executed search warrants in 20 cities as part of their on-going nationwide investigation into the use of computer online services and the Internet to lure minors into illicit sexual relationships and to distribute child pornography using computers. In a comment on this inquiry, Director Freeh said that these searches were "a continuation of a highly successful investigation which has resulted in many convictions . . . These cases have already revealed the ease and frequency with which criminals have used modern technology to cause grave harm to children."

Therefore, I want to applaud the Chairman's effort to bring law enforcement's serious concerns about how to maintain our children's safety, to law. Furthermore, this bill does simply protect our children in its language, but it also raises the minimum sentences for committing these kinds of sexual crimes against our children.

However, this hearing's topic is more merely than H.R. 3494. Actually, Mr. McColm has opted to use this hearing time to also discuss a series of bills that as well deal with child protection and safety issues. For example, H.R. 2173 requires electronic communication providers to report any information about incidents of sexual abuse that these workers may be somehow privy to, H.R. 2488 mandates background checks for people in non-profit organizations that work with children, and finally, H.Con.Res 125, in a joint resolution expressing the sense of the Congress, urges state legislatures to enact notification procedures when a violent sexual offender is released from prison.

I am truly excited about the progress that I think we can achieve in coming that much closer to making this world a safer place for our children with all of these unique legislative approaches. I am excited about working with the Chairman on certain additions and improvements to his bill, and applaud the effort of all of the members who are gathered here today that have offered legislation on this important issue. Thank you.

Ms. JACKSON LEE. And to make one or two points about the abhorrent acts of violence against children and the pedophile acts against children and the fact that our children seem to be more vulnerable today than we've seen them over the years. I am certainly very much enthralled by the series of legislative initiatives. It shameful that we have to go so many different routes to try to

prohibit these kinds of heinous acts from occurring, and I would like to note that all of us have heard of recent stories of adult men trying to plan sexual rendezvous with young girls in what are called Internet chat rooms. So, we are finding out that even with this increased technology, it is now being utilized for criminal acts.

The video that was just shown evidences some of our continuing problems as to whether or not pedophiles can ever be rehabilitated or ever show remorse or guilt or recognizing that they've done it before they have the inclination—here's someone who openly says he's moved from place to place and even tried to cover up his acts, so I would simply say that I hope that the Justice Department and this committee can find ways to make sure that the basic constitutional rights of individuals which we know that we have to respect are in place but that this is such a devastating blight on society that we must address it.

And so I'd like to raise under those parameters a question about the Child Abuse Notification Act, Congressman Frank, and I think the concern or the question that I have was, again, any sort of questions that we may have on First Amendment or any violation of "the other person's rights" in spite of how heinous acts these acts are, how would you respond to that?

Mr. FRANKS. Ms. Lee, what I've discovered is that ISPs are now very reluctant—even when they believe they've identified someone who's out using a chat room to exploit a child—to report it to law enforcement officials because of various privacy rulings by the court. So, they are chilled from doing what they would otherwise be inclined to do for fear of running afoul of judicial decision. In my judgment, it's the responsibility of this Congress to make certain that ISPs are obligated when they come upon this evidence to report. We'll protect them from liability, civil and criminal, if in good faith they offer up this information. These kids are more than little profit centers. They deserve a special measure of protection, so as this committee deliberates on striking the appropriate the balance, if we err anywhere it ought to be to give our kids a little extra measure of protection.

Ms. JACKSON LEE. So, as I understand your legislation, there is protection for those who will offer up the information from civil liability. Is that specifically in there or the fact that are required to do so provides them with the defense?

Mr. FRANKS. No, it specifically insulates them from liability.

Ms. JACKSON LEE. In the legislation. And I assume what we can—it is analogous to say years back when physicians were not reporting child abuse, and as we encouraged that sort of openness, we've seen child abuse and the same thing with violence against women. I was concerned because I think that would be some of the things that would be raised by those who would be required to do so.

Representative Foley, on the Volunteers for Children Act coming from local government, we had this issue some years ago with our Parks and Recreation Program and people volunteering. I'm trying to understand would the youth-oriented organization go to the State agency or go direct to the FBI, and if the State agency did not respond, can they go direct to the Federal Government?

Mr. FOLEY. The bill contemplates going directly to your local authority, obviously, then to the State and to the Federal Government. We do not suggest in the bill that they have the right to bypass that and go directly to the FBI, because we think that would create certain burdens on the FBI to process, so we are, again, going through State and local procedure to do this, and they are obviously adequately set up to do this.

When I got a real estate license, I had to go to my local police department for a background check, a fingerprint check, that they submitted to the FBI. When hairdressers in many States, in 35 States, go to get an occupational license, they get an FBI background check. It is amazing to me that we wouldn't do the same to protect our children since the system is in place in order to provide for other occupations.

Ms. JACKSON LEE. Has the FBI or the Department of Justice responded to you as to how they would receive these calls? How would they funnel them? How would they track them? What procedures they've put up to receive these calls, because if they went to their State agency but didn't have procedures in place, I assume they'd have to utilize—they're utilizing the national system of fingerprinting and whatever else they're checking?

Mr. FOLEY. Correct.

Ms. JACKSON LEE. And so if it has voluntarily been requested, that means that they're not looking at a State that has something in place; they are using your law to be assisted by the Federal Government.

Mr. FOLEY. Correct.

Ms. JACKSON LEE. Do we know how that would be implemented?

Mr. FOLEY. Basically, as I understand it, the current process allows for it, and all States have access to FBI checks. It was only certain categories that were excluded. This would give them the access through local authority. The Department of Justice and the FBI's only concerns were the costs to the agencies and processing time, and what we heard from the FBI is based on their computer system being implemented. This will reduce, dramatically, the time required for processing.

Ms. JACKSON LEE. Mr. Chairman, if you would indulge, I just have another question and comment for Congressman Gutknecht on his legislation. I'm trying to—Megan's Law was such an enormous—had such an enormous impact on this Nation but particularly the tragedy of the loss of Megan's life, and if I understand your frustration is, if you will, that this has not permeated all of the State legislatures, as I understand it, and so we don't have Megan's Law everywhere. Am I understanding that—you help me—are you trying to implement this nationally or are you trying to encourage States to set up systems to follow the Federal law?

Mr. GUTKNECHT. Well, let's go back. When we passed Megan's Law, basically, we said to the States, "You have to pass some kind of community notification." All but a couple of States have done that, but what they've passed is really sort of a patchwork of different laws.

To put in sort of perspective, they fall into three groups. The first group, there are 11 States that have what we would describe as a three-tier system which is very active that really goes out and noti-

fies communities when dangerous predators are being released, and I would agree with you and some of the other witnesses that, frankly, I would hope States—and we at the Federal level will provide the encouragement as well, but many of these people I'm not so convinced that they can ever really be rehabilitated, and, perhaps, should never be released back into our communities, but that's a different debate for a different day.

Twenty-three States have what can be described as active community notification, but there is no three-tier system, and I might just mention in that group are two of the States which are mentioned on the video: California and Florida.

And then there are 15 States which have what are described as passive community notification, and that means information is available on a limited basis, but you have to know who to ask and how to get it.

I'm not suggesting that we ought to tell the States exactly how they have to go on this, but it seems to me that we at the Federal level could provide the States with a little more direction on, "Here are plans that seem to be working and do a better job." As was mentioned at the end of the tape, I don't think we'll ever completely solve this problem. These are very criminal people, and they will find ways to circumvent almost anything that we at the State or Federal level do, but I think we can, at the Federal level, try to provide them with guidelines that we think will both meet the constitutional test as well as do a better job of protecting our neighborhoods and our kids.

Ms. JACKSON LEE. Mr. Chairman, I know we have the Department of Justice coming on, but I think with the congressman's explanations we would be looking to the Department of Justice in terms of where they would house the information for States that would be calling up to sort of learn under this legislation what to do, and I think that's important.

Mr. Chairman, I want to note, in closing again, that I have a young lady here by the name of Domika who is visiting with me from the local District of Columbia schools, and I just wanted her to be aware of the work that's done here to protect children.

And, Mr. Chairman, I would also just like to either ask your permission or at least say out of your graciousness that you know that I will be offering an amendment, and I'd like to include it in the record of this hearing that tracks some of the work of the members here dealing with pornography on the Internet. Every time we discuss this issue—we discussed it in the telecommunications legislation and were defeated—but to find out how we can thwart pornographic images on the Internet keeping in mind the challenges we got on the First Amendment, and this is an amendment that would study this question.

Mr. MCCOLLUM. Well, certainly, your amendment can be made a part of the record. We're not, of course, at a stage in the proceedings where we're in markup.

Ms. JACKSON LEE. I do understand, and I'd like to have it made a part of the record and look forward to our discussion on that issue.

Mr. MCCOLLUM. Without objection, without objection, it will be entered into the record.

[The information referred to follows:]

Amendment to H.R. 3494 Offered by Ms. Jackson Lee of Texas

Add at an appropriate place the following:

SEC. __. LIMITING AVAILABILITY OF PORNOGRAPHY ON COMPUTERS.

(a) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, the Department of Justice, taking into consideration the work being done by the Federal Bureau of Investigation, shall enter into a contract with the National Research Council of the National Academy of Sciences to conduct a study of computer-based technologies and other approaches that could help to restrict the availability to children of pornographic images through electronic media including the Internet and on-line services as well as the identification of illegal pornographic images with a goal of criminal prosecution.

(b) **CONTENTS OF STUDY.**—The study shall address the following:

(1) The capabilities of present-day computer-based control technologies for controlling electronic transmission of pornographic images.

(2) Research needed to develop computer-based control technologies to the point of practical utility for controlling the electronic transmission of pornographic images.

(3) The inherent limitations of computer-based control technologies for controlling electronic transmission of pornographic images.

(4) Operational policies or management techniques needed to ensure the effectiveness of these control technologies for controlling electronic transmission of pornographic images.

(5) Policy options for promoting the deployment of such control technologies and the costs and benefits of such options.

(6) Other matters that the National Research Council deems relevant to computer-based control technologies and their use in the context of a deployed national information infrastructure.

(c) **TIME FOR REVIEW.**—The National Research Council shall conduct the review over the 24-month period beginning upon completion of the performance of the contract described in subsection (a).

(d) **FINAL REPORT.**—The final report of the study shall set forth the findings, conclusions, and recommendations of the Council and shall be submitted to relevant Government agencies and congressional committees.

(e) **APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**—The Federal Advisory Committee Act shall not apply to the study made under subsection (a).

(f) **FUNDING.**—TO CARRY OUT THIS SECTION, THE DEPARTMENT OF JUSTICE SHALL USE NOT MORE THAN \$750,000 OF THE FUNDS OTHERWISE APPROPRIATED TO THE DEPARTMENT BY THIS ACT.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you, and I want to thank you, Mr. Foley and Mr. Gutknecht. I know Mr. Franks had to scurry out of here. You've spent a lot of time this morning with us as well as a lot of time on the subject matter, and we appreciate your dedication.

Mr. GUTKNECHT. Thank you, Mr. Chairman.

Mr. MCCOLLUM. Thank you. At this time, with a great deal of patience, we'll ask Kevin DiGregory to come up here who is the Deputy Assistant Attorney General in the Criminal Division who oversees child exploitation and obscenity matters. This is his job. He also receives computer crime; that's his section and the broad section as well. The former chief assistant states attorney in Dade County, Florida who specialized there in criminal cases. It says I'm supposed to tell Mr. McNulty he's a native of Pittsburgh, Pennsylvania.

Mr. DIGREGORY. Mr. McNulty knows that already, Mr. Chairman. I just added that little note for his benefit, so that—

Mr. MCCOLLUM. I just want to note that my San Francisco Giants baseball team that I'm a fan of took two games from the Pirates this week.

Mr. DIGREGORY. [continuing]. yes, I noted that as well, Mr. Chairman; sadly, but I noted that as well.

Mr. MCCOLLUM. Well, welcome aboard.

Mr. DIGREGORY. Thank you.

Mr. MCCOLLUM. Your entire testimony will be admitted into the record unless there's objection, and I hear none, so it is. You may proceed to summarize it, and we thank you for coming.

STATEMENT OF KEVIN DIGREGORY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. DIGREGORY. Thank you, Mr. Chairman. Thank you for an opportunity to presents the administration's views on H.R. 3494, the Child Protection and Sexual Predator Punishment Act. We commend you and support your goals in moving forward this bill, and I am here to voice the strong support of the administration for H.R. 3494's goal of combating child pornography and exploitation.

The views letter that was submitted by the Department of Justice offered a number of suggestions which we respectfully submit will strengthen H.R. 3494, and, therefore, enhance the effectiveness of Federal prosecutors and Federal agents in their efforts to protect our Nation's children.

If I may, Mr. Chairman, I'd like to highlight some of those suggestions which focus on consistency and proportionality, thereby, advancing an overall aim of your legislation to reduce the sexual exploitation of children by effectively punishing sexual predators.

First, I'd like to turn my attention to proposed section 101 and advise, again, as we advise in our letter, that we support the addition of subsection (c) to 18 United States Code 2422. That subsection (c) that you propose would prohibit contacting a minor or one who has represented himself or herself as such for the purposes of engaging in criminal sexual activity. We have a suggestion, though, that is in our views letter that production of child pornography be included in the definition of criminal sexual activity, so that if one contacts someone who is under the age of 18 or someone who represents themselves to be under the age 18, for the purpose of getting them to engage in the production of child pornography, that that, too, be punished under an amendment to 18 United States Code 2423.

Currently, I will advise you, Mr. Chairman, that we are unable to federally prosecute those who transport minors or travel with the intent or use facilities of interstate commerce to try to lure minors into this insidious form of exploitation unless the production actually occurs and the finished product is mailed or shipped in interstate commerce, and I'll have more on that as I continue my remarks. We seek your assistance in closing that enforcement gap.

H.R. 3494 also seeks to amend the child pornography possession and distribution statutes to allow prosecution of possession and distribution of child pornography made with materials shipped in the mail or materials which flow through interstate commerce. This partially closes another current enforcement gap.

We are suggesting adding similar language to 18 United States Code 2251, so that producers who use materials shipped in the mail or interstate commerce to operate their illicit enterprises, can be brought to the bar of Federal justice even when their products are not shipped interstate. Currently, unless their products are shipped interstate, the products themselves, we cannot seek Federal prosecution of them. This, we believe, also, Mr. Chairman, would promote proportionality with respect to the amendment that you suggest regarding possession and distribution.

With respect to consistency, a few comments. Section 202 amends 18 United States Code 2423 by creating the new crimes of transporting an individual the perpetrator believes to be a minor for purposes of engaging in criminal sexual activity or traveling with the intent to engage in criminal activity with an individual who is a minor or who the perpetrator believes to be a minor. We suggest that language which will allow a prosecutor and a jury to more readily focus on the facts rather than the belief of the offender, be substituted. Such language can be found in your proposed section 101 of H.R. 3494. That language being an individual who has been represented to the person as not having attained the age of 18.

To promote, again, consistency and to close an enforcement gap, we suggest using the language in H.R. 3494's proposed 2423 (a) which defines sexual activity broadly enough to include all violations of State law. We support proposed section 301 which allows the Attorney General to issue administrative subpoenas for certain offenses against minors. In order to enhance our ability to effectively prosecute these crimes and effectively investigate these crimes, we suggest that proposal be extended to include all crimes against children under chapters 53, 109 (a), 110, and 117.

Mr. Chairman, I thank you for the opportunity to comment on those highlights of our views letter, and I would be glad to try to answer any questions that you have at this time.

[The prepared statement of Mr. DiGregory follows:]

PREPARED STATEMENT OF KEVIN DIGREGORY, DEPUTY ASSISTANT ATTORNEY
GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, April 28, 1998.

Hon. BILL MCCULLUM, *Chairman,*
Subcommittee on Crime,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: We are pleased to present the views of the Department of Justice on H.R. 3494, the "Child Protection and Sexual Predator Punishment Act of 1998," as well as our views on H. Con. Res. 125, H.R. 1972, H.R. 2122, H.R. 2173, H.R. 2488, H.R. 2815 and H.R. 3185, other measures that have as their goal the reduction or elimination of the sexual or other exploitation of children.

At the outset, we commend you for moving H.R. 3494 forward and state the strong support of the Administration for H.R. 3494's goal of combating child pornography and the sexual exploitation of minors. Toward that end, we offer the following suggestions, which we believe will strengthen H.R. 3494 by making it more workable and effective.

Inclusion of "production of child pornography" and "attempt" in the coercion of a minor statute and the travel to engage in sexual activity with a minor statute. Proposed Sections 101 and 103 amend 18 U.S.C. § 2422, which proscribes using the mail or a facility or means of interstate or foreign commerce to contact a minor for

the purposes of engaging in criminal sexual activity. Section 202 amends 18 U.S.C. §2423, which prohibits the transportation of minors to engage in any sexual activity for which any person can be charged with a criminal offense. The production of child pornography is not encompassed within the statutes' definition of prohibited sexual activity, however. As a result, individuals who travel or use facilities of interstate commerce to persuade minors to engage in the production of child pornography have not been subject to federal prosecution. The addition of "production of child pornography" would allow federal prosecution in these circumstances.

We also believe that inclusion of "attempt" language in 18 U.S.C. §2422(a) would be helpful in charging cases where the defendant attempts to lure individuals into illegal sexual activity, but the travel did not take place (i.e., only an attempt occurred). Existing Section 2422(b) and the bill's proposed Section 2422(c) already include attempt provisions.

Allowing prosecution of production of child pornography cases where materials used to make the child pornography were transported in interstate or foreign commerce. Although the bill amends 18 U.S.C. §2252, the child pornography distribution and possession statute, it does not amend 18 U.S.C. §2251, the child pornography production statute. We suggest a section that amends 18 U.S.C. §§2251(a) and (b) to include language permitting prosecution of the person "if such visual depiction was produced with materials that had been mailed, shipped or transported in interstate or foreign commerce by any means, including, but not limited to, computer." The child pornography possession statutes in 18 U.S.C. §§2252 and 2252A proscribe the possession of child pornography that was produced with materials that had been mailed, or shipped or transported in interstate or foreign commerce. The child pornography production statute, however only allows prosecution if the defendant knows or has reason to know that the visual depictions themselves will be transported in interstate or foreign commerce, or if the depictions actually were so transported. There have been a number of cases where the defendant produced the child pornography but did not intend to transport the images in interstate commerce. In such cases, the federal government cannot prosecute the production of child pornography charge, but, instead, must turn the production case over to state prosecutors. The suggested amendment will enable the case to be prosecuted federally, which will ensure that an appropriately severe sentence is available.

Permitting forfeiture of assets utilized to distribute or possess "morphed" child pornography or certain items of child pornography or to produce child Pornography overseas for importation into the United States, or the proceeds of such offenses, or in cases under the Mann Act. We suggest that in Section 105, 18 U.S.C. §§2252A and 18 U.S.C. §2260 should be inserted in the list of statutes that subject property to criminal and civil forfeiture under 18 U.S.C. §§2253 and 2254, respectively, and that chapter 117 in its entirety be added to the criminal forfeiture predicates in sections 2253 and 2254. Sections 2252A and 2260 are the only statutes referring to child pornography that are not referenced in the child pornography forfeiture section, 18 U.S.C. §§2253. As a result, the government has not been able to seek forfeiture of computers that were utilized to receive or distribute "morphed" child pornography, or computers containing substantial images of child pornography in situations where all the child pornography was found in the computer, under the new child pornography statute, 18 U.S.C. §2252A. Inclusion of these two child pornography statutes within the forfeiture section will permit forfeiture of assets or proceeds involved in these child pornography offenses.

Correction of amendment of the pretrial detention statute. Section 106 creates the possibility of pretrial detention for certain child sex offenders. However, the proposed section, which would amend 18 U.S.C. §3142(f), is partially redundant with 18 U.S.C. §3156(a)(4), which defines "crime of violence" to include offenses under Chapter 109A and Chapter 110. We suggest that an amendment of the definition section to include Chapter 117 offenses would be a simpler and better alternative.

Change the definition of sexual act in the "travel to engage in sexual activity with a minor" statute. Section 202 amends 18 U.S.C. §2423 to create the new crimes of transporting an individual the person believes to be a minor for illegal sexual activity and travelling in interstate commerce for the purpose of engaging in illegal sexual activity with an individual the person believes to be a minor. Initially, we note that the phrase "belief that the individual has not attained the age of 18 years" should be stricken, and the phrase man individual who has been represented to the person as not having attained the age of 18 years" should be substituted. This is the same language found in Section 101 of the bill.

We also suggest that line Section 2423(b), the phrase "for the purpose of engaging in any sexual act (as defined in Section 2246) with another person who has not attained the age of 18 years, or whom the person believes has not attained the age of 18 years, that would be in violation of chapter 109A if the sexual act occurred

in the special maritime and territorial jurisdiction of the United States," should be stricken and the phrase "for the purpose of engaging in any sexual activity with another person who has not attained the age of 18 years, or who has been represented to have not attained the age of 18 years, for which any person can be charged with a criminal offense" substituted therefore.

An anomaly is apparent when one compares subsection 2423(a) with subsection 2423(b). Subsection (a) permits prosecution of persons who transport a minor in interstate commerce with the intent that the minor engage in any sexual activity for which any person could be charged with a criminal offense. Thus, if the defendant intended to commit a state sex crime with the minor, such as statutory rape, the transportation would come under the proscriptions of the statute. Subsection (b), by contrast, permits prosecution of those who travel themselves with the intent to commit sex crimes that would violate Chapter 109A, if the sexual activity had occurred within federal jurisdiction. In these circumstances, a person who traveled in interstate commerce with the intention of having consensual sexual activity with a 16-year-old minor would not violate the statute, because Chapter 109A only punishes consensual sexual activity between the defendant and a minor between the ages of 13 and 15, if the perpetrator is four or more years older than the minor. The existing language has been a barrier to prosecution of Section 2423(b) crimes in cases where the person travels to meet a minor aged 16-18. If the state has a statute prohibiting consensual sex with minors under the age of 18, the bill language would inappropriately permit travel to engage in sexual activity that is proscribed under state law.

Sentences for possession of 50 or more items of child pornography and for using a computer to contact a minor for sexual activity. Section 104 inserts language in the child pornography possession statute that requires a mandatory two-year sentence if the possession consists of 50 or more items. Section 107 amends the coercion statute, 18 U.S.C. § 2422, by requiring a mandatory three-year sentence for using a computer to persuade a minor to engage in sexual activity. Instead of this approach, we would prefer a directive to the Federal Sentencing Commission to develop Federal Sentencing Guidelines enhancements in cases where the computer is an instrument used in any attempted or actual sexual exploitation of a minor under the age of 18. These enhancements should be applicable to cases under 18 U.S.C. 2422 and 2423.

Striking Section 204, the Punishment for Repeat Offenders Section. We recommend that Section 204 be stricken for two reasons. The section amends 18 U.S.C. § 2241, the aggravated sex offense statute, by adding a new subsection (e) that punishes repeat offenders by imposing life imprisonment for those who violate Section 2241 and who had twice been previously convicted of either: (1) a serious state or federal sex crime, which is defined as an offense under Sections 2241 or 2242; or (2) crimes that would have been an offense under either of such sections, if the offense had occurred within federal jurisdiction. This proposed subsection is at least partially redundant. The three strikes statute, found at 18 U.S.C. § 3559(c), already includes federal or state offenses consisting of aggravated sexual abuse and sexual abuse as described in 18 U.S.C. §§ 2241 and 2242. Under the three strikes statute, defendants would similarly receive life imprisonment if they had two prior serious sex crime convictions.

Proposed subsection (e)(1)(B) actually creates a new federal crime, even though it is placed in a "punishment for repeat offenders" subsection. It would mandate a mandatory life sentence for a person who has two prior serious sex crime convictions, and who commits an aggravated sex crime in which either: (1) the person travelled in interstate or foreign commerce or used the mail or any facility of interstate or foreign commerce to commit the crime; or (2) the person's conduct occurred in or affected interstate or foreign commerce. Presumably, states have concurrent jurisdiction over the offenses covered by the proposed amendment. Unless there are significant gaps in state criminal codes or evidence of failure by state criminal justice systems to effectively punish rapists, expansion of federal jurisdiction would be difficult to justify.

Eliminate the redundancy of placing the crime of "crossing state lines to have sexual activity with a minor under 12 years" in two different sections by combining Sections 2241 and 2243(a). Section 207 corrects an anomaly in the Amber Hagerman Act by striking the phrase "crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years" from 18 U.S.C. §§ 2243(a). We support the objective of this provision but suggest substitute language in section 2241, combining elements of Section 2241 and 2243 (a). The new language would proscribe: (1) crossing State lines with intent to engage in sexual relations with a minor under 12 years old and then engaging in or attempting to engage in the sexual activity; (2) engaging in aggravated sexual activity, under the

circumstances described in subsections (a) or (b) with a minor aged 12 to 17; and (3) crossing State lines with intent to engage in a sexual act with a minor aged 12 to 17, and then engaging in or attempting to engage in the sexual activity, if the perpetrator is at least four years older than the minor. A principal effect of our suggestion is that these last two crimes would raise the age of the protected minor from 15 to 17 years old, with maximum penalties of imprisonment of up to 15 years, a fine, or both, whereas the first crime would maintain the maximum penalty of life. The combined statutes would also have a "state of mind" requirement, as specified in Section 2241 (d), and a "defenses" subsection as specified in Section 2243 (c). Section 2243 would remain intact only as to subsection (b) (sexual abuse of a ward).

The rationale behind our suggested change relates to the fact that Chapter 109A and Chapter 110 have differing penalties for essentially the same offense. The crime of "crossing State lines to engage in a sexual act with a minor under the age of 12", is now proscribed by Sections 2241(c), 2243(a) and 2423(b), which uses the language "individual under the age of 18." By combining 2241 (c) with 2243 (a), and by requiring that the sexual act actually occurred, the statute's harsher penalty of any term of years or life would appropriately fit the crime. Section 2423(b) and its maximum penalty of ten years would still be available if no sexual activity actually occurred.

In addition, the suggested increase in the protected age of the minor from age 16 to age 18 in the aggravated child rape section and the statutory rape section would be consistent with the protection of minors statutes, the majority of which refer to a minor as an individual under the age of 18. See, Chapter 11 and Chapter 117 offenses.

Deletion of federal jurisdictional base in kidnapping statute if the offense affects interstate or foreign commerce. Section 302 permits federal jurisdiction over a state kidnapping if the mail or any facility or means of interstate or foreign commerce is used in furtherance of the offense or if the kidnapping "affects interstate or foreign commerce." We support the former (mail or use of a facility of commerce base, to which we suggest also the addition of "travel in interstate or foreign commerce language as in 18 U.S.C. § 1952), but believe that the proposed "affecting commerce" base is too broad for kidnapping offenses. In light of the fact that the kidnapping statute has a 24-hour presumption that permits the FBI to investigate, regardless of the circumstances of the offense, there is simply no need for federal jurisdiction over purely intrastate activity.

Creation of a new resources center on child abduction and serial murder investigations. Section 304 proposes to repeal the current Missing and Exploited Child Task Force (42 U.S.C. § 5776a) and create a new unit within the FBI to work child abduction and serial killer cases. This section appears to combine the functions of the current Child Abduction/Serial Killer Unit (CASKU) in the FBI with the functions of the multiagency missing children task force into one unit to use the resources of the FBI more effectively. We support this idea. It also appears to address many of the operational and procedural problems encountered by the current task force. However, the bill spells out in detail how the unit would operate and what tasks it would carry out. Perhaps less detail in its functions would permit more flexibility, so that the unit could better achieve its goals. We also question whether creating a national unit, as well as units in each of the FBI field offices, is the best use of resources. It seems redundant to have so many units when other mechanisms are already in place (e.g., through the designation of Crimes Against Children Coordinators in each field office who are available to act as liaisons with the national unit, as needed). We are, in any event, in favor of the continued relationships with and between the United States Customs Service, the United States Secret Service, the Postal Inspection Service, and the Marshals Service, so that their resources and expertise will be available to the unit whenever necessary.

Other matters. Section 104 makes clear that illegal possession of child pornography, as proscribed by 18 U.S.C. § 2252, can refer to possession of three or more matters, each of which contains a visual depiction of child pornography, or one matter containing three or more visual depictions of child pornography. We suggest that the phrase "computer disk" be inserted in the phrase "three or more books, magazines, periodicals, films, video tapes, or other matter" to clarify that possession of three or more computer disks, each of which contains at least one visual depiction of child pornography, also violates the possession statute, just as possession of one computer disk, containing three or more visual depictions of child pornography, violates the possession statute.

We also believe that Chapter 117 offenses should be recognized as enhancement offenses throughout Chapter 110 and Chapter 109A. For example, 18 U.S.C. § 2251(d) permits an enhancement if the person has a conviction under Chapters 110 or 109A, but does not include prior convictions under Chapter 117. Similarly,

while there is a 5-year mandatory minimum sentence for individuals charged with receipt or distribution of child pornography and who have prior state convictions for child molestation (18 U.S.C. §§ 2252(b)(1) and 2252A(b)(1)), there is no enhanced provision for those individuals charged with possession of child pornography who have prior convictions for child abuse. (18 U.S.C. §§ 2252(b)(2) and 2252A(b)(2) provide only for increased minimums for state convictions for possession.) We suggest an increased mandatory minimum sentence of 2 years for individuals charged with a violation of any subsection of 2252 or 2252A, if the individual had a prior conviction for sexual abuse of a minor. In addition, although there is a mandatory restitution statute for Chapter 110 offenses (18 U.S.C. § 2259) and for Chapter 109A offenses (18 U.S.C. § 2248), there is no mandatory restitution statute for Chapter 117 offenses. The bill should include a section mandating restitution for Chapter 117 offenses, as well.

Section 301 would provide for the use of administrative subpoenas in cases involving crimes against minors, or individuals represented to be minors. We support this section but recommend its extension to all crimes involving minors under chapters 53 (Indians), 109A (sexual abuse), 110 (sexual exploitation and other abuse of children), and 117 (travel for illegal sexual activity and related crimes) of title 18, United States Code.

Section 303 proposes a new federal offense (proposed 18 U.S.C. § 1123) for the crossing of state lines with intent to commit murder in the first degree. Under the proposal, a prosecution would be permitted only if the Attorney General or other appropriate official certifies that "the conduct intended to be engaged in (by the defendant) was a serial killing."

We note that murder is usually a local violation that is usually and most effectively addressed by local law enforcement. Officers and detectives handle these investigations on a daily basis and have developed an expertise in this area. Through the National Center for the Analysis of Violent Crime (NCAVC), the FBI currently assists local law enforcement in serial murder investigations, when requested, by providing technical and forensic resource coordination and immediate investigative support through onsite consultations and by sharing research findings and violent crime analysis. The FBI laboratory also provides forensic support and resources to state and local law enforcement. We therefore are opposed to this provision. We do support the proposed language in H.R. 3494 that provides resources for funding the Morgan P. Hardiman Child Abduction and Serial Murder Investigative Resources Center. We believe that this legislation would enhance the FBI's existing ability to assist state and local law enforcement in serial murder investigations.

H. Con. Res. 125, H.R. 1972, H.R. 2122, H.R. 2173, H.R. 2488, H.R. 2815 and H.R. 3185. We are pleased to offer our views on the additional bills and resolution mentioned in your letter of March 20, 1998. *H. Con. Res. 125* would express the sense of Congress that each state should establish an advisory board to conduct risk assessments of sex offenders for the purposes of community notification. While the Department strongly supports efforts to assist states in developing effective community notification programs for sex offenders, we are concerned that, if *H. Con. Res. 125* were to pass, states may have the impression that the highly detailed program set forth in the Resolution is the only acceptable method for notifying their communities about dangerous sex offenders.

In fact, since the passage of Megan's Law (Pub. L. 104-145), which amended the community notification provisions of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Pub. L. 103-322), to require the release of relevant information that is necessary to protect the public concerning registered sex offenders, states have developed a variety of different methods for notifying communities about sex offenders. We believe it is appropriate for states to retain some flexibility in how they conduct notifications in their communities under the general guidelines of the Wetterling Act and Megan's Law. Indeed, recent amendments to the Wetterling Act that were included in the FY 98 Commerce, Justice, State Appropriations Act were designed to give states greater flexibility in deciding what procedures should be used in setting up and maintaining their sex offender registration programs. The Department of Justice has been working, and will continue to work, with the states in crafting their community notification programs. In particular, the Department, through the Bureau of Justice Assistance, is funding two studies examining community notification. We would be pleased to brief interested Members on our efforts in this area.

H.R. 2488, the Volunteers for Children Act, proposes to facilitate fingerprint checks for individuals seeking to work in youth serving organizations. The National Child Protection Act (42 U.S.C. § 5119a) provides for background screening of individuals who work with children, the elderly and the disabled. Fingerprint checks by the FBI, pursuant to Pub. L. 92-544, are limited by the requirement that state law

on the subject must authorize the federal check, as well. This bill proposes to bypass these restrictions in states that have not addressed background checks of individuals in youth-serving organizations.

The concept of the legislation, which proposes to facilitate completion of thorough background checks for individuals working with youth, is laudable. We note that the bill provides little motivation or incentive to states to implement background check systems. Indeed, the proposal appears to minimize the benefit of local record background checks, which are often more timely and germane to the individual's activity in the community. In the absence of state statutory guidance, an agency responsible for relaying the results of a background check would be required to make difficult choices between the privacy rights of the applicant and public safety concerns. We would oppose any further bypass of these systems that would result in background checks based on applicant's name, rather than on fingerprints.

H.R. 1972 prohibits the sale or purchase, by "list brokers," of personal information about a child without the consent of the child's parents. This bill is designed to provide protection for children, so that personal information cannot be so easily acquired by those individuals who use that information to harm or exploit children. It is our understanding that the Federal Trade Commission (FTC) is currently preparing a report to Congress on the effectiveness of self-regulation as a means of protecting consumer privacy on the Internet. It would, in our view, be appropriate to wait for the FTC report before this legislation is further considered. The bill also provides for disclosure of these lists to the National Center for Missing and Exploited Children, in order to permit comparison with the names of the children listed with that organization as missing. The language of the bill does not address privacy issues involved with disclosure to NCMC and management of the information, nor does it provide for any penalty for failure to disclose.

There are two technical comments we offer regarding H.R. 1972, as well. First, please note that paragraph (2) in subsection (b) explicitly assumes that the person is a list broker. This is evidently a drafting error, resulting from a failure fully to revise the language from subsection (a)(3), relating to list brokers, when it was adapted in formulating the parallel offense in subsection (b) for persons who offer commercial products or services to children. Second, the offense defined in paragraph (1) of subsection (c) refers to any worker registered pursuant to the Jacob Wetterling Act. Since the actual sex offender registration programs are established by the states, and sex offenders' legal obligations to register arise from the state laws that establish the state programs, this section should probably refer, instead, to any worker registered pursuant to a state sex offender registration program.

Two bills, H.R. 2173 and H.R. 2815, address concerns about those who prey upon children through use of the Internet. H.R. 2815 creates a new offense, 18 U.S.C. § 2260A, that prohibits anyone from using the Internet to target a child for "sexually explicit messages or contacts." The coercion of a minor statute, 18 U.S.C. § 2422(b), already punishes an individual who uses, or attempts to use, the Internet to persuade a minor to engage in illegal sexual activity. Similarly, the travel with intent statute, 18 U.S.C. § 2423(b), already punishes an individual who travels to meet a minor with the intent to engage in illegal sexual activity. We would also note that if, under *Reno v. ACLU*, 117 S. Ct. 2329 (1997), Congress cannot prohibit the "display" of indecent messages to minors, it could be argued that a statute proscribing the sending of sexually explicit messages to minors is unconstitutional, as well.

H.R. 2173, which requires reporting of child abuse by electronic communications service providers, could be a step toward making the Internet a safer environment for our children. Presently, some Internet service providers voluntarily report known occurrences of individuals using their services to exploit children. The Department previously supported bills similar to H.R. 2173. However, as drafted, this bill is unclear as to whom a report is made and where it is to be referred for further investigation. (Presumably a report would be filed with an appropriate law enforcement or social services agency, depending upon the circumstances.) Nor does the bill provide for any sanctions for failure to make a report. It is unclear if the bill refers only to those incidents reported to the provider, or whether it might require the provider to develop a monitoring or policing system for all communications. The latter is not practical for providers because of cost and resource issues.

H.R. 2122 would amend 18 U.S.C. § 3559 ("sentencing classification of offenses") to provide for a mandatory life sentence (unless the death penalty is imposed) if a victim of the production of child pornography or a serious violent felony dies as a result of the offense and the victim is under 14. We would not object to the proposal, if it were amended to provide that the death of the victim must have been intentional. In addition, we note that there are other situations that might result in the death of a victim under the age of 14 (e.g., cases under the Mann Act) but that would not be afforded the same protection under this bill.

H.R. 3185 removes the requirement in the child pornography possession statute that the individual must possess at least three matters containing a visual depiction of child pornography. Under the proposed language, an individual could be charged with possession of child pornography if he or she possessed one illegal image. We have no objection to this proposal.

We look forward to working with you and your staff to enact tough and effective legislation to combat child exploitation. Please do not hesitate to call upon us if we may be of additional assistance in connection with this or any other matter. The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the presentation of this report.

Sincerely,

ANN M. HARKINS,
Acting Assistant Attorney General.

cc: The Honorable Charles F. Schumer
Ranking Minority Member

Mr. MCCOLLUM. Thank you very much, Mr. DiGregory. We really appreciate your patience today, and your complete testimony is exhaustive of the other bills, as well, I might add, and we appreciate that too.

I'm curious if you could tell us what types of cases are typically turned down in the child pornography and Internet area in terms of prosecution?

Mr. DIGREGORY. I don't know if "turned down" is the appropriate word, because, of course, for many of these crimes—in fact, for most of them, I believe, there are concurrent State offenses which may be utilized. One of the bills that has been discussed and one that we support is one that would require only the possession of one piece of child pornography in order for there to be a potential Federal prosecution. We have encountered situations where, for example, someone will have possessed six or seven pieces of child pornography and during the course of a trial, because, perhaps, there was insufficient proof that the person's depicted in the pornography, courts have dismissed particular counts or have failed to allow juries to consider particular depictions, and we've been left with two or one which under the current law we can't prosecute.

One of the things that we would be able to do with the bill that has been introduced is to prosecute those where one picture has made it through that entire process and the other pictures can then, which have not made it through the process, can be used to establish the criminal intent of the person who possessed the pornography. Again, I say that "turned down" I don't think is the appropriate way to characterize it, but there are factors that we look to in order to best devote the Federal resources that we have to attack this problem.

Mr. MCCOLLUM. Well, let me tell you why I ask that question in part. Because last spring, the Weekly Standard had an article that you probably read and are familiar with where it said the FBI's Innocent Images has collected evidence of online criminal activity for over 4,000 suspects, and I don't know if that's the case—maybe you can tell us that that's true—but I only have indications up here that you've had like 152 convictions or something like that. That seems to be what the Innocent Images article by the Weekly Standard said. What explanation can you give us to that if, in fact, it's true what the article reports?

Mr. DIGREGORY. I think that other Members of both the House of Representatives and the Senate have been made aware of the numbers of leads that have been encountered by the Bureau, but with respect to those leads, I can only tell you that there are no hard and fast rules regarding who is investigated or who is prosecuted, and I can only tell you that there are many factors which the Department of Justice considers and which the FBI considers in pursuing those leads. Those factors included whether the images are new ones that have been circulated or whether they are ones that have been circulated for years out of published sources; whether the sender has been identified, because those leads do not necessarily mean that the sender has been identified; analysis of accompanying materials; the apparent age of the persons in the images. In addition, Mr. Chairman, it may be that those leads involve a single transmission, and although I have indicated to you that we wholeheartedly support the legislation which allows us to prosecute with respect to a single transmission or a single depiction which is possessed, we have to consider in deciding whether or not to pursue those cases or prosecute those cases the very problem that you raise when discussing the three v. one issue: whether or not we can readily establish or sufficiently establish the criminal intent of the perpetrator who actually possesses this material, and, of course, whether or not we can establish the identity of the perpetrator.

Mr. MCCOLLUM. So, the ratio or the proportion that has expressed whether the precise numbers are right of maybe having 4,000 leads or 4,000 suspects and only getting ultimately convictions on 152 of those would not be out of line?

Mr. DIGREGORY. Well, I'm not going argue with you with respect to the numbers, because we supply you with the numbers.

Mr. MCCOLLUM. Okay, that's fair enough. But, again, last point about is that there was an ad in the paper I think in the Washington Times in December. According to the ad sponsored by a number of pro-family groups, the Department of Justice declined nearly 95 percent of obscenity cases referred to in 1994. I don't know, again, if that's correct or not. Is that the same explanation you give for that—that you just gave me for the other?

Mr. DIGREGORY. I don't know if that number is correct either, but with respect to our obscenity prosecutions I can tell you that we have been active in obscenity prosecutions and that there are also State laws which cover the prosecution—the investigation and prosecution of those who would purvey obscenity. We, in our enforcement program, have chosen to focus on the major distributors of obscenity, and we've done that, and there are a number of cases in which we have been successful, and I would be more than glad to share with you some details with respect to those cases, we can, perhaps——

Mr. MCCOLLUM. Well, we probably ought to do that on another occasion, but that, nonetheless, is still disturbing.

Let me just go with the specific bills that are here today; just two or three questions because we do have a vote on, and, albeit, I'm the only one left here, unfortunately, to ask questions——

Mr. DIGREGORY [continuing]. I thank you for remaining.

Mr. MCCOLLUM [continuing]. I'm going to eventually have to go vote.

Mrs. Slaughter has a piece of legislation we've taken liberally from into our bill that we're having before us today, and I asked her questions and you've referred to it to some extent in your testimony about the degree of federalization; how far do we go out in the States in these serial rape cases? Obviously, if we have certain interstate elements there we can do that, but you have expressed concern over this, and she cited the numerous examples of serial rapists who should have been in prison but they were not for whatever reason. Do you think these examples would indicate that there is a failure by the State criminal justice systems to prosecute these rapists?

Mr. DIGREGORY. [continuing]. her comments were very disturbing, but I'm not sure that I would go so far as to say that this indicates widespread failure. There may have been specific failures in State court systems. I would be very interested, though—as I noted in my letter, I think that States have concurrent jurisdictions over these crimes. I think we have to be careful with respect to the federalization of these kinds of crimes to assure ourselves that there aren't systemwide problems; that there aren't criminal enforcement gaps, and, I must confess, I don't know what the views of the National Association of Attorneys' General or the National District Attorneys' Association or the International Association of the Chiefs of Police are with respect to this legislation. I'd be interested in knowing their views for a lot of reasons including the fact that I'm a former State court prosecutor who felt that with the number of tools that we were given by the Florida legislature, we could effectively handle most of these cases.

Mr. MCCOLLUM. Well, I don't know either, but I think we need to look into that, and I'd certainly appreciate if, perhaps, you could look into what examples we have.

The other area's in kidnapping. We also have, as you know, an effort here to try to improve and encourage the States' utilization of the FBI as resources in this regard and do it earlier than they have before and particularly the specialized assistance that the FBI gives for forensic and investigative experience and procurement of bloodhounds and search teams and so forth. Without the FBI, what percentage of State and local law enforcements have access to this type of assistance, do you know?

Mr. DIGREGORY. I couldn't give you a percentage to that. I can only speak from my own experience that as a State prosecutor that in a number of cases we have cooperated with the FBI regarding kidnappings or presumed kidnappings.

Mr. MCCOLLUM. If State and local law enforcement are unaware that a murder in their locality may be connected to a murder in a neighboring State, can law enforcement provide assistance in that situation? Or must the Federal Government be invited in to participate if you're aware of it on your own that there's a connection there, if you follow me?

Mr. DIGREGORY. I'm not sure that I do. I guess that your concern is can local law enforcement get the assistance of the FBI in getting information.

Mr. MCCOLLUM. Yes, well, let's say—no, let's just say that they don't ask it of you. Let's just say you know it. Just out of the blue, you know it because of some research the FBI is involved in doing,

and the States aren't even aware there's a connection between a murder in State X or a murder in State Y, but you see a serial pattern there. Some of your investigators see that happening. Do you have to wait on the State or is there some informal communication that goes on saying, "Hey, Sam, down there, you know there's a little connection here. If you request it, we'll get involved."? How does that work?

Mr. DIGREGORY. I think, again, from my own experience, informal communication goes on all the time, and there are a number of murder investigations in which I have been involved where, for any number of reasons, including pursuit of leads which tell you where people have been before or records checks which have turned up that people have criminal histories in other places, detectives have been able to run down with, in some cases, other local law enforcement assistance in those States or with FBI assistance exactly what the criminal past was of that individual and also been able to run down whether or not there were crimes of a similar nature committed in other jurisdictions.

Mr. MCCOLLUM. Well, again, I got into a very broad base of questions with you rather than narrowing the scope to the specific bills. There are multiple ones here you have critiqued in addition to the underlying one, but you've done a very good job of it. In fact, I think what you've provided to us will give us an opportunity to amend the underlying bill and, perhaps, incorporate provisions in modified fashions from some of the Members who were here, their legislation, so I want to thank you, the Department of Justice, on a fine job in connection with this hearing today, and you're very good about it even though my questions may not have targeted it; may not have made it sound that way, but thank you very, very much.

Mr. DIGREGORY. Well, thank you, Mr. Chairman, and so much of the credit goes to the people of the child exploitation and obscenity section who took a very, very close and careful look at the legislation that was submitted by you and other Members.

Mr. MCCOLLUM. Well, thank them for all of us. This hearing is adjourned.

[Whereupon, at 11:45 a.m., the subcommittee adjourned subject to the call of the Chair.]





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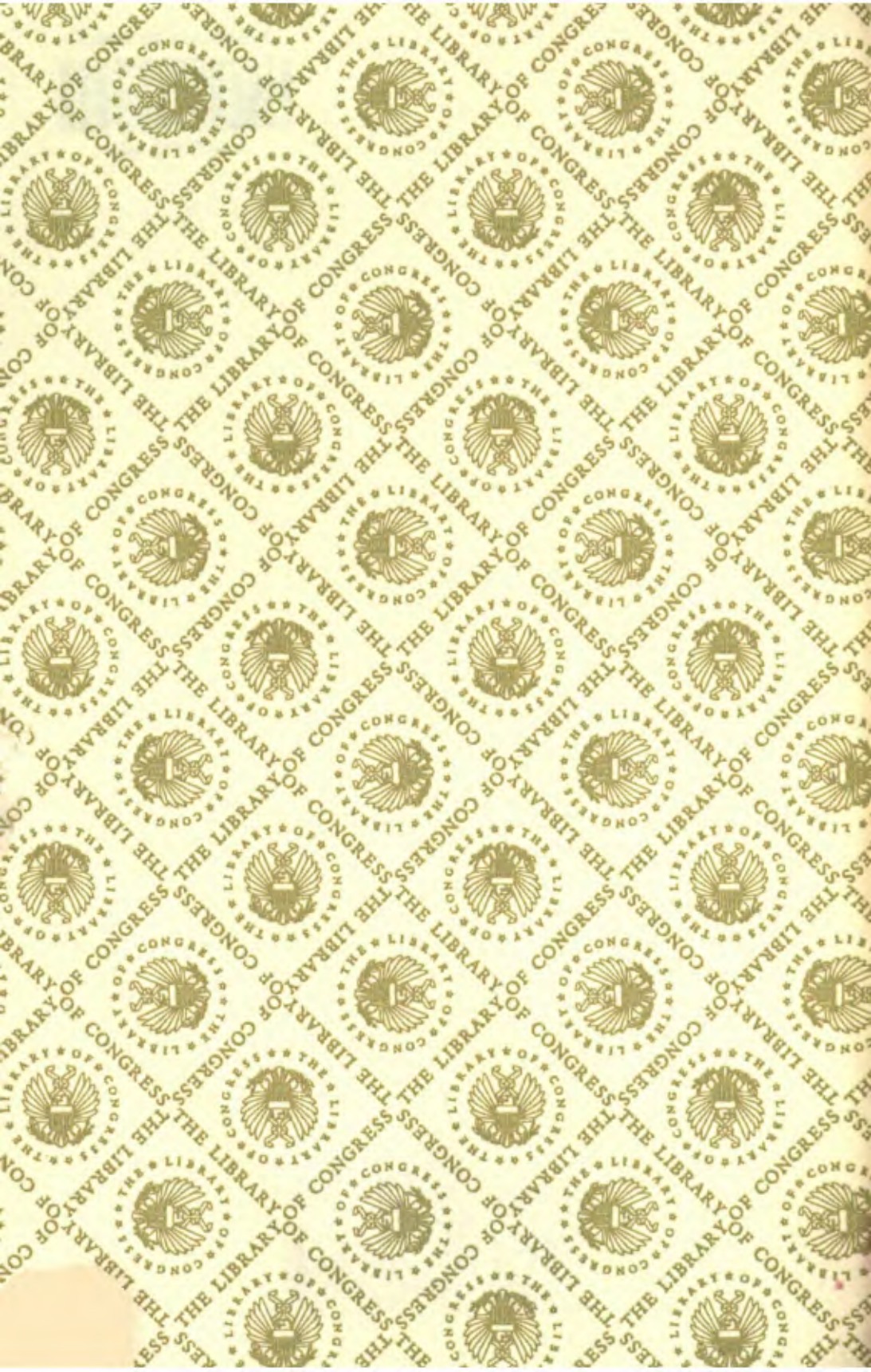


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